# Hawaiian Gazette.

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**Hawaiian Gazette.**

SEMI-WEEKLY.

ISSUED TUESDAYS AND FRIDAYS

W. R. FARRINGTON, EDITOR.

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# Y. M. C. A. DIRECTORS.

Committees Report on Affairs of the Association.

MANY NEW MEMBERS ELECTED.

Canvass of City To Be Made Soon for Purpose of Obtaining Money to Liquidate Debt of Gymnasium. Classes in Excellent Condition.

The regular monthly meeting of the Board of Directors of the Y. M. C. A. was held in the association parlors last night. There was a good attendance of members. The secretary reported as follows for the month of October:

The month of October has seen the inauguration of the classes in the gymnasium. It is very gratifying to note that this new department in our work is meeting with success; 123 men and youths have already joined and we hope to see others enroll their names.

The educational classes commenced on the evening of the 8th and are well patronized as the report will show.

Mr. Yatman, the evangelist, being seen on board the Alameda decided to pay us a visit and the meetings already held have accomplished much good.

The Sunday service at the jail has again resumed after a lapse of some months. The vessels are still visited on Sunday mornings and reading matter left on each vessel.

The new book cases have been placed in the reading room and our books are once more in circulation.

REPORT OF DEVOTIONAL COMMITTEE.

Your Devotional Committee beg leave to report that the following meetings have been held during the month of October: Prison services for month, 3; total attendance, 290; average, 96. Boys' meetings for month, 3; total attendance, 31; average, 10. Sunday evening praise service, 4; total attendance, 867; average, 92. Yatman meetings, 20; average estimated, 73. The presence of Mr. Yatman in our midst has been a great blessing to many of us, giving us such faith as we have never known before and stirring us up to the need of the great work which is constantly before us in this city. Can it be that the Christians of this city are indifferent to the work of reconsecration and regeneration which the Spirit of God can effect in the lives of professing Christians and of those who are not Christians What we need is the earnest prayers and the earnest effort and cooperation of every Christian in this city, so that there may be no hindrance to the outpouring of the Spirit upon us and the blessings which are sure to follow. "Bring ye all the tithes into the storehouse, and I will pour out upon you such a blessing that there shall not be room enough to receive it." Shall we fulfill the conditions and receive the blessing?

ARTHUR B. WOOD.
Chairman Devotional Committee

PHYSICAL DEPARTMENT.

The classes in the gymnasium commenced on the 8th October. The following classes have been held during the month:

| Class | Number Held. | Total Attendance. | Average |
|---|---|---|---|
| Young men | 6 | 79 | 13 |
| Business men | 5 | 71 | 14 |
| Student | 4 | 37 | 9 |
| Working boys' | 2 | 17 | 8 |
| Boys' | 8 | 240 | 30 |
| Total classes | 25 | 444 | |

The total number who have thus far joined the gymnasium is 123 (Oct. 1) There have been examined by the doctor; three have had heart trouble to some degree. Besides the medical examination, fifty-three have taken the office examination for measurements.

The evening classes commenced the work on the 8th October, as follows:

Elementary class meets Mondays, Wednesdays and Fridays, and the subjects included are reading, writing, arithmetic, spelling and grammar. Number enrolled, 11.

Bookkeeping class meets Tuesday evening—21 students enrolled

Shorthand class meets on Wednesday evening 18 students enrolled.

Drawing class meets on Friday evening—10 students enrolled.

Singing class meets on Friday evening—24 students enrolled

Type writing class meets on Monday evening—10 students enrolled

Total students enrolled, 84.

The following memorandum of the cost of building the gymnasium, making alterations, gymnasium apparatus, etc., for the Y. M. C. A. was submitted by the secretary:

| | |
|---|---|
| Building of gymnasium, alterations, etc | $15,888 07 |
| Gymnasium apparatus, labor, etc | 1,695 23 |
| Furnishing (including electric light fixtures) | 676 70 |
| Total | $18,260 00 |

The Y. M. C. A. has gone into debt $6000 in order to meet all obligations incident to recent improvements, but the management feels certain the sum can be raised within the next week or so, as a complete canvass of the city will be taken. Honolulu has always responded heartily to calls for help from worthy sources, and it is hoped she will do the same in this case.

The association took in 111 new members—58 seniors and 53 juniors.

## SYNOD WILL MEET.

Possibility of Consolidation in the Anglican Church.

The second session of the Diocesan Synod, called by his lordship the Bishop of Honolulu will meet on November 27th to elect delegates. This synod meets once in two years and has continued for sixteen years; practically it is the legislative body of the Anglican Church. It has been in existence for sixteen years.

In the opinion of a prominent member of the Bishop's congregation the consolidation of the two congregations will be seriously considered.

The fact that Rev. Mackintosh still holds his congregation and will continue to hold it is evidence that there will not be a consolidation.

Politics has, unfortunately, entered into the troubles of the church, but the popularity of Mr. Mackintosh is such that politics or anything else will not interfere with it.



The wife of Mr. Leonard Wells, of East Brimfield, Mass, had been suffering from neuralgia for two days, not being able to sleep or hardly keep still, when Mr. Holden, the merchant there, sent her a bottle of Chamberlain's Pain Balm, and asked that she give it a thorough trial. On meeting Mr. Wells the next day he was told that she was all right, the pain had left her within two hours, and that the bottle of Pain Balm was worth $5.00 if it could not be had for less. For sale at 50 cents per bottle by all dealers. BENSON, SMITH & Co., agents for H. I.

# TO ASK FOR CHARTER.

Sons of Veterans Will Form a Honolulu Camp.

MEN WHO WILL BE MEMBERS.

Grand Army Post Will Assist in the Work—More to be Added to the List. Under California Division—Another Meeting Next Week—Address, Etc.

By the next mail to the Coast an application for a charter of the Honolulu Camp of the Sons of Veterans will be forwarded to Division Commander Louis E. Schroder of San Francisco. The first meeting of those interested in the organization of the Hawaiian branch of the society was held last evening in the American League Hall. The attendance was not large, owing to many of the prospective members being obliged to be present at the drill shed, but there were enough there to assure the success of the move, although it will be some weeks before the camp has settled down to the regular routine.

The members of the Grand Army Post took the matter up at their meeting last evening and will do all possible to assist the new organization which is to keep bright the memory of the veterans after they have been placed on the retired list.

Up to the present time some twenty men in Honolulu have given proof of their eligibility to become members of the Sons of Veterans, and several of those among the regulars at the barracks and in the volunteer companies are looking up the back history of their families in order to join the ranks of the new camp.

Those who may be considered the prime movers in the project are: L. K. McGrew, J. F. Hilbus, William H. Smith, John W. Short, C. B. Manges, George Overback, George Dillingham, J. K. Kelley, W. C. Wilder, Jr., Harry Wilder, J. J. Green, Louis Adler, T. B. Murray, Charles Murray, Messrs. Rowell and Peterson. Minister Cooper, W. W. Dimond, and Messrs. Goodale of Hawaii are also among the possible members.

The meeting last evening was given up principally to discussion of ways and means, an explanation of the requirements of membership and the suggestion of the names of those who were eligible to join the ranks. During the latter part of the evening Past Commander O. H. Harlan, Phil Sheridan Post No. 44, of Tacoma, Wash., addressed the meeting and gave an interesting talk on the aims of the organization and of the good work which Honolulu members had before them. Like the Grand Army Post, the Sons of Veterans' Camp will be included in the California Division for which the following officers were elected at the last State encampment in Sacramento:

Division Commander—Louis E. Schroder, 36 East Ave., Holly Park, San Francisco.

Senior Vice Division Commander—W. H Banks, Woodland.

Junior Vice Division Commander—W. H. Collins, Vallejo.

Surgeon—C. E. Hailstone, M. D, San Jose.

Chaplain—Rev. W. L Gaston, Vallejo.

Adjutant—Isidore Simon, 333—27th—St., San Francisco.

Quartermaster—A. M. Annis, 812—21st—St., San Francisco.

Inspector—N. S. Bangham, Pasadena

Mustering Officer—H. J. Shirley, Santa Cruz

Judge Advocate—Ora G. Williams, Woodland.

Division Council—E. H. Houck, Santa Cruz; Harry E Pratt, Los Angeles; C. M. Tabler, San Jose

Past Commanders—L De P. Callahan, Edw C Robinson, Fred V. Wood, C. J Callahan, E. W. Conant, S L. Bodget, F W. Bunnell, F C. Shipley.

Another meeting will be held next week when it is anticipated that several new members will come forward ready for active work.

The Sons of Veterans is an organization numbering over 35,000 members, and their qualifications are "All male descendants, not less than eighteen years of age, of deceased or honorably discharged soldiers, sailors or marines who served in the Union army or navy during the civil war of 1861 1865, shall be eligible to membership, provided that no person shall be eligible who has ever been convicted of any infamous crime, or who has or whose father has ever borne arms against the Government of the United States of America."

It declares its principles as follows:

Section 1 A firm belief in Almighty God, and a realization that under His beneficent guidance the free institutions of our land, consecrated by the services and blood of our fathers, have been preserved, and the integrity and life of the nation maintained.

Sec. 2. True allegiance to the Government of the United States of America, based upon a respect for, and devotion and fidelity to, its Constitution and laws, manifested by the discountenance of anything that may tend to weaken loyalty, incite to insurrection, treason or rebellion, or in any manner impair the efficiency and permanency of our National Union.

The objects of the order are:

To keep green the memories of our fathers and their sacrifices for the maintenance of the Union.

To aid the members of the Grand Army of the Republic in caring for their helpless and disabled veterans; to extend aid and protection to their widows and orphans; to perpetuate the memory and history of their heroic dead, and the proper observance of Memorial Day.

To aid and assist worthy and needy members of our order.

To inculcate patriotism and love of country, not only among our membership, but among all the people of our land, and to spread and sustain the doctrine of equal rights, universal liberty and justice to all.

November 12, 1881, was the birthday of the Order of Sons of Veterans, and Maj. A. P. Davis, known by all as "Pap Davis," is the father of the organization. On the above-named date eight boys, ranging from ten to sixteen years of age, met in the "West Markethouse," Pittsburgh, Pa., and organized Davis Camp, No. 1. On the 26th of November of the same year, the original ritual of the order was adopted, and on December 28th a charter was granted by the State of Pennsylvania. Three camps had been organized by February 18,1882, being located at Pittsburg, Pa; Atlantic City, N J., and McKeesport, Pa., respectively. H. T. Hawley was elected as the first Colonel of the Pennsylvania division. The motto "Gratia Del Secvatus" (preserved by the grace of God), was adopted January 28, 1882, as was also the badge inscription "Filii Veteranorum" (Sons of Veterans). The badge was patented June 27, 1882. The badge consists of a horizontal bar, bearing the above inscription, attached to which is the ribbon of red, white and blue, and pendant from the ribbon is the lower part of the badge, bearing the monogram "S. V.," also the motto. The badge is of bronze, manufactured from captured cannon. The under side of the badge bears the coat-of-arms of the order, which was copyrighted March 13, 1882.

The title of "Sons of Veterans, United States of America," was chosen June 28, 1882, and Col. H. T. Rowley was made the first Provisional Commander in-Chief.

At the thirteenth National Encampment, held at Davenport, Ia., August 20 23, 1894, a new Three-degree Ritual was adopted, to go into effect January 1, 1895 The membership of the order at present is near 100,000, which is distributed among about 2.500 camps. Pennsylvania, Massachusetts, Ohio, Illinois, Kansas, New York and Indiana rank among the leading divisions.

The adoption of the new Three-degree Ritual, together with the wise legislation enacted at the Davenport encampment, has caused a new impetus to spring up in the order, and the best results are expected Many new camps are being organized and many suspended and dropped members are being regained. The principles of the order, "Friendship, Charity and Loyalty," are becoming more thoroughly inculcated, and the future promises rapid and substantial growth for the order of Sons of Veterans.

## ART LEAGUE MUSICAL CIRCLE.

Successful Meeting--Entertainment to Be Given.

The first meeting of the members of the musical circle of the Kilohana Art League was held in the league hall last night. Many enthusiasts were present and consequently the meeting was fraught with interest from beginning to end.

The circle is proud to claim in its ranks Miss Grace Richards, Miss Kate McGrew, Miss Jessie R. Axtell, Miss R. Nolte, Miss Carrie Castle, Mrs. Tucker, W. W. Hall, Professor Berger, A. Isenberg, Dr. Day, H. Hedemann and a number of other prominent musicians of the city.

The first musicale will take place on the first Thursday in December. This will be the first entertainment of the four circles of the Kilohana Art League. It will be followed by an entertainment given by the literary circle The program for the musicale is being arranged for now. None but members will have the privilege of attending.

The league is doing most successful work and is to be congratulated on its swift advancement.

Frank J. Lake will leave on the Kinau this morning for Hilo, where he will accept a position on the Hilo Tribune, soon to be issued.

## In the Supreme Court of the Hawaiian Islands.

SEPTEMBER TERM, 1895.

EDMA G. TROUSSEAU, VS BRUCE CARTWRIGHT AND HUGH M'INTYRE, EXECUTORS OF THE WILL OF GEORGE P TROUSSEAU, DECEASED.

Before JUDD, C J., FREAR, J and E P DOLE, ESQ., a Member of the Bar in place of Mr. Justice BICKERTON absent from illness.

The agreement sued on and set forth in the opinion of the Chief Justice is supported by a sufficient consideration

It was both made and to be performed in this country although executed by one of the parties thereto in Paris France

The capacity of a married woman to contract is governed by the *lex loci contractus*.

A separate wife domiciled in a foreign country may contract with her husband in this country.

A widow may sue the representatives of her deceased husband upon a valid contract made with him.

OPINION OF THE COURT, BY JUDD, C J.

This action is assumpsit by Madame Edma G. Trousseau, widow of the late George P. Trousseau, against his Executors upon a contract in writing, made in 1882, signed by plaintiff in Paris, France, on the 10th June, and in Honolulu on the 13th July by G Trousseau, the decedent. The agreement is in the French language, of which an English translation is furnished, as follows:

"It has been agreed and arranged as follows between the undersigned, Mr. George Phillipe Trousseau, living at Honolulu, Sandwich Islands, of the one part, and Madame Edma Genevieve, living at Paris, boulevard Haussmann, No. 64, having been married, but now separated from the said George Trousseau, of the other part:—

ARTICLE 1.

Monsieur Trousseau admits as absolutely correct the account of the claims and demands proved by Madame Trousseau, on the 11th of March, 1882, which said account amounts to the sum of one hundred and fifty thousand, eight hundred and sixty-five francs and fifty centimes.

ARTICLE 2.

Monsieur Trousseau engages to pay immediately to the French Consul at Honolulu, to the credit of Madame Trousseau's account at Paris, a sum sufficient to form a capital of twenty thousand francs, payable at Paris in French money to Madame Trousseau upon her receipt for the same.

ARTICLE 3.

Monsieur Trousseau engages to pay henceforth upon the same conditions on the first day of January of each year, and for the first time on the 1st day of January, 1884, to the French Consul at Honolulu, a sum sufficient to form a capital of five thousand francs, payable at Paris each year in French money to Madame Trousseau upon her receipt for the same

This sum of five thousand francs is considered and regarded as interest on the capital of one hundred and thirty thousand eight hundred and sixty-five francs and fifty centimes, which will remain due from Mons. Trousseau to Madame Trousseau after the payment of the sum of twenty thousand francs, of which mention has been made above.

Mons. Trousseau engages, if his circumstances allow him and as soon as they allow him, to discharge the total amount of his debt to Madame Trousseau, by paying over to her the capital which will remain due to her:

As soon as this capital is reduced to one hundred thousand francs, the annual sum of five thousand francs settled as above, will decrease in proportion as the total debt is extinguished, this annual sum of five thousand francs commencing from this period being considered as the interest at the legal rate in France, namely, five per cent. of this capital of one hundred thousand francs.

ARTICLE 4

In case of the death of Madame Trousseau, Monsieur Trousseau undertakes to perform the preceding obligations on behalf of his two sons.

ARTICLE 5.

If Monsieur Trousseau should leave Honolulu, he undertakes to notify the French Consul of the place where he proposes to establish his new residence.

ARTICLE 6.

Upon these conditions and immediately after the first payment to the French Consul at Honolulu of the sum sufficient to form a capital of twenty thousand francs, payable at Paris in French money, Madame Trousseau undertakes to discontinue forthwith the proceedings instituted by her against Mons. Trousseau at Honolulu, and to withdraw the demand made by her before the court of Hawaii.

ARTICLE 7.

The present articles of agreement should be performed in good faith on the part of both parties, and in the event of non-payment of any of the sums above mentioned at the date when it falls due, Madame Trousseau will be at liberty to renew the proceedings upon the mere information which shall have been given to her by the French Consul at Honolulu, that the sum of money has not been paid at the date when it fell due.

This agreement is made in three originals, one for Mons. Trousseau, the second for Mme. Trousseau, and the third for the Bureau of the French Consulate at Honolulu.

At Paris, the tenth day of June, A. D 1882, for Mme. Trousseau, and at Honolulu the thirteenth day of July, 1882, for Mons. Trousseau

In approval of the foregoing instrument (Sgd) E TROUSSEAU, nee Vaunois

In approval of the foregoing instrument (Sgd) G TROUSSEAU."

The bill of particulars claims, amount of principal due and unpaid as per the agreement executed by defendant July 13, 1882—$26,173 - and interest on the said sum from 1st January, 1894, at 5 per cent., $1168 16; total, $27,331 16.

The complaint, after pleading the agreement, sets out *inter alia* that the decedent, in pursuance thereof, paid the sum of five thousand francs annually to the plaintiff to the end of the year 1893, but paid nothing on the principal sum of one hundred and thirty thousand, eight hundred and sixty five francs and fifty centimes That the agreement declared on was made in consideration that the plaintiff would forbear to proceed in a certain action then pending in the Supreme Court of the Hawaiian Islands, brought by her against said George P. Trousseau to recover the sum of $37,862 28 then due, owing and payable by the said George P. Trousseau to plaintiff upon the judgment of a French Court, and that plaintiff, upon the execution and delivery of said agreement, discontinued her said action, and that at the date of the agreement declared on she (plaintiff) was separated from her said husband by decree of a French Court, and said decree was, and until his death remained, in full force and effect, and that by the law of France and also by the law of Hawaii, at the date of said agreement, plaintiff had the right to make contracts and bring suits thereon in her own name as if she were a *feme sole*.

The defendants executors interposed a demurrer, alleging as grounds:

1. The complaint is insufficient in law.
2. The agreement sued on is void for want of a good, sufficient and valuable consideration.
3. The alleged contract sued on is inoperative and of no effect, being an attempted contract between husband and wife.

The demurrer was sustained by Circuit Judge Cooper, on the ground (first) that the agreement does not show any consideration for the promise to pay the principal sum, but only the interest, a forbearance by plaintiff upon Mons Trousseau's promise to pay interest which he was bound to pay without any new promise and (second) because the parties being separated but not divorced, the statute of 1888, would not authorize a suit by the wife against her husband or his personal representatives.

The law is well settled that forbearance to exercise a right is a good consideration. "A valuable consideration, in the sense of the law, may consist in some right, interest, profit or benefit accruing to the one party or some forbearance, detriment, loss or responsibility given, suffered, or undertaken by the other." Currie vs. Misa 10 L. R. Exch 162

"The consideration upon which an assumpsit shall be founded must be for the benefit of the defendant or to the trouble or prejudice of the plaintiff. And therefore a promise in consideration of the forbearance of a suit is good; for that is for the benefit of the defendant, tho' the action is not discharged." 1 Comyn's Digest p. 195.

Prof. Langdell in his notes to select cases Part II p. 1022 finds that "detriment to the promisee is a universal test of the sufficiency of consideration; i. e. every consideration must possess this quality, and, possessing this quality, it is immaterial whether it is a benefit to the promisor or not." Tested by this rule I find that it was a detriment to Madame Trousseau (the promisee) to give time to Mons. Trousseau, to pay the remainder of principal debt "as soon as circumstances would allow" (i. e. "when able")—and the taking of interest annually at less than the Hawaiian rate. I hold therefore, that Mons. Trousseau's assumpsit was upon valuable considerations and the agreement in this respect was good. This ground of demurrer cannot be sustained.

The remaining question is whether the contract itself is inoperative and void, as having been made between husband and wife, who though separated by judicial decree, were not divorced.

The interesting inquiry whether the validity of this contract should be tested by French or Hawaiian law becomes pertinent. The contract was made in 1882; the Married Woman's Act of 1888 has, therefore, no effect upon it. The contract must be tested by the law in force at the time it was made, whether French or Hawaiian I am of opinion that it must be judged by Hawaiian law.

The contract was drafted here. It is of no significance that it was in the French language; it might have been written in any other language. The domicil of Mons. Trousseau was here, and the suit against him was pending in this Court. The contract was to be performed here. Mons Trousseau did not engage to pay Madame Trousseau in Paris. He bound himself to pay to the French Consul at Honolulu a certain sum which would be equal to five thousand francs in Paris. This means that if the payment of one thousand dollars here would not be sufficient to net 5000 francs in Paris, he must bear the exchange; in case he removed from Honolulu, he was to notify the Consul of the place where he proposed to establish his new residence. The "mere information" to Madame Trousseau by the French Consul at Honolulu that any of the sums agreed by Mons Trousseau to be paid were not paid when due, authorized Madame Trousseau to revive the suit. The Consul here was to judge whether the contract had been broken.

When tested by the rule that the place of the performance of the contract is to be determined by the intention of the parties, we find that the place of the performance was to be at Honolulu, and the contract is to be governed by Hawaiian law. Having thus held, it is unnecessary to consider whether the French law is well pleaded in the complaint.

Is this contract void? By the common law it would be, as being made between husband and wife. But a decree of divorce *a mensa et thoro* had been made Madame Trousseau was a "separated wife."

Our Hawaiian statute defining the status of such a woman is peculiar. I do not find any similar statute in other countries See Dean v. Richmond 5 Pick 561 The statute reads See 1339 Civil Code Comp. Laws, p. 440, "Whenever a decree of separation is granted, the decree shall have the effect, during such separation, to reinstate the wife, whether the wrong-doer or not, in the right to sue or be sued, to alienate and convey property, to make contracts and to do all other acts as if she were a *feme sole*."

Separation from bed and board being a relief to married persons under certain circumstances, created by statute, the statute must control: The separated woman is not forbidden by the statute to make contracts with her husband. This character of contracts is not excepted, as in the Married Women's Act of 1888.

I find the statute broad enough to allow the separated woman to contract with her husband.

This construction is in accord with the modern policy of the treatment of woman. If she is separated from her husband by decree of Court she ought to have power to make contracts with every one, not excepting her husband. The statute says that the decree shall have the effect to "*reinstate*" her in these rights as if she had not been married.

Very many Courts have held that where the Married Women's Acts allow the wife to have "sole control" of her separate property or "to act as a *feme sole*," she may sue even her husband with respect to it. Wright v. Wright, 54 N. Y. 437; Whitney v Whitney, 49 Barb. 319; Scott v. Scott, 13 Ind. 225; Emerson v. Clayton, 32 Ill, 493; and may recover against him in ejectment, Wood v Wood, 83 N. Y. 575. The opposite view is sustained in Small v. Small, 129 Penn. 366.

If the right of a married woman, separated from her husband, to contract with him and to sue him, is limited to contracts and suits concerning her separate property, the case before us seems to be of that character. A French Court had adjudged Mons. Trousseau to be indebted to his wife in the large sum mentioned. The judgment was, therefore, her separate property, and she brought the suit here to enforce it.

The exceptions are sustained and the demurrer is overruled.

The case is sent back to the Circuit Court, First Circuit, for further proceedings.

Honolulu, Oct. 29, 1895.

OPINION OF FREAR, J.

While I concur in the conclusion of the Chief Justice, and in the general line of thought pursued by him, yet I desire to state my views somewhat differently, though I shall do so but briefly, inasmuch as he has so fully stated much of the law bearing upon the case. I shall consider in order each of the five questions which, in my opinion, must be decided in disposing of the exceptions.

First, the argument against plaintiff's capacity to bring this action, based as it is upon a supposed absence of statutory authority for suits by a wife against her husband, is sufficiently answered by the mere statement of the fact that the action was brought neither by a wife nor against a husband, but by a widow, a *feme sole*, against certain third parties, executors.

Secondly, was there a sufficient consideration for the promise sued on, namely, that of Mons. Trousseau?

A consideration is to be distinguished from a condition, and a consideration consisting of a promise to perform is to be distinguished from a consideration consisting of performance.

In this case the contract is somewhat inartificially drawn, but it seems to be bilateral, consisting of mutual promises, those on each side being collectively the consideration for those on the other side. The consideration for Mons. Trousseau's promises was apparently Madame Trousseau's promises to discontinue her suit upon certain conditions and to forbear renewing proceedings upon certain other conditions.

There may be ground for argument that the instrument in question contains two or more unilateral contracts, Mons. Trousseau's promises being considered as made upon condition that his wife should perform certain things, in which case upon her performance thereof the condition ripened into a consideration.

In either case his promises were made for a sufficient consideration—either her promise or her performance.

If the contract was bilateral, it is unnecessary to consider now how far the performance of each promise was dependent upon the performance of the other. If there were two or more unilateral contracts, it is unnecessay to say, whether there was a sufficient consideration for her promises, for the suit is not brought on her promises, but on his I am, however, of the opinion that there was ample consideration for her promises.

Thirdly, by what law is the validity of the contract to be determined so far as this depends upon the status of the plaintiff as a separated wife at the time the contract was made?

That the validity of a contract, in so far as this depends upon the nature or form of the contract itself, is governed by the *lex loci contractus*, is so well settled as to need no citation of authority—subject always, of course, to the qualification that the contract must not be immoral or unjust or unjurious to the country or the citizens of the country in which rights under it are sought to be enforced.

But in so far as the validity of a contract rests upon the status of a party thereto, there is considerable diversity of opinion in respect to the law which should govern. The continental European jurists as a rule maintain that the *lex domicilii* should govern. In England the question seems to be somewhat unsettled. In the United States, there has been some leaning towards the European doctrine, as for instance, in Matthews v. Murchison, 17 Fed. Rep. 760, in which, however the statement of the Court that the *lex domicilii* controlled as to the ability of a married woman to contract, may perhaps be regarded as *obiter dictum*, inasmuch as the *locus domicilii* in that case was also the *locus contractus*. See also 3 Am. & Eng Enc of Law 573. But it may now be considered as settled by the decided weight of authority and, it seems to me in consonance with the better reasons, that the *lex loci contractus* is generally to govern questions of capacity to contract as well as questions of the validity of the contract itself See the leading case of Milliken v. Pratt, 125 Mass. 374, for a discussion of the authorities and a lucid statement of the arguments *pro* and *con*, by Chief Justice Gray, now a Justice of the Supreme Court of the United States. See also Ross v. Ross, 129 Mass. 243; Bell v. Packard, 69 M 105; Graham v. National Bank, 84 N. Y. 393; Nixon v. Hallev, 78 Ill. 611; Wright v. Remington, 41 N. J. L. 48; Holmes v. Reynolds, 55 Vt 39; Story, Conf. of Laws, Sec. 103; Whar., Conf. of Laws, Sec. 120.

Fourthly, in this case, which is the *locus contractus*, France or Hawaii, by the law of which the capacity of the plaintiff to make the contract in question should be determined?

The *locus contractus*, that is, the seat of an obligation, may be either the *locus celebrationis* or the *locus solutionis*, the place where the contract is made or that where it is to be performed. Whether it is one or the other in any particular case is a question of fact rather than of law—a question chiefly of the intention of the parties. For the validity of "a contract is governed by the law with a view to which it was made." In general in the absence of anything showing a contrary intention, the *locus celebrationis* is to be regarded as the *locus contractus*, but if the contract is to be performed elsewhere, this is regarded as strong and in some cases conclusive evidence that the contract was made with reference to the *lex loci solutionis*. For a clear statement of the law and references to the authorities upon this phase of the case, see Pritchard v. Norton, 106 U. S. 124.

In the present case, I find that the contract was both made and to be performed in this country, and hence there is no occason to consider any conflicting views as to whether the *lex loci celebrationis* or the *lex loci solutionis* should govern for they are identical in this case.

In the first place the contract was made here. This is clear both from the contract itself and from the pleadings.

The contract was executed by Madame Trousseau in Paris, June 10, 1882, and by Mons. Trousseau at Honolulu, July 13, 1882. But it must be regarded as completed as a binding contract at the same time and place, at least, if it be considered as one bilateral contract. And, since it cannot have become a contract until there was a meeting of the minds of the parties, it must be considered as having become binding at the time and place where it was last executed, that is, at Honolulu, the assent of the party first executing being deemed to continue until execution by the other party. If there were two unilateral contracts, then there can be no question that the promise sued on, that is, Mons. Trousseau's was made here

The pleadings also show that the contract was made here, for the agreement is described in the declaration as "made and signed by the said decedent on the 13th of July, A.D. 1882," at which time the document was executed by him at Honolulu.

In the second place the contract was to be performed here. On Madame Trousseau's part, performance, namely, discontinuance and forbearance, was to take place here. On Mons. Trousseau's part his admission of the correctness of the claim against him was made here; his payments were to be made to the French Consul here though payable ultimately in Paris; failure on his part to pay the Consul here is expressly made a breach of the contract; payment by him to the Consul here would be performance on his part whether the money ever reached Paris subsequently or not; in case of his departure from Honolulu, he was to notify the Consul here of his proposed new residence, and, presumably, continue to remit to the Consul here. It may be that the remote matter for the settlement of which this agreement was made was the decree of the French Court, or some other matter having its seat in France, but this alone, if shown to be a fact, would not control the other circumstances of the case, while on the other hand, the immediate matter for the settlement of which the agreement was made was the suit in the Hawaiian Court.

Lastly, under Hawaiian law, in 1882, could a separated wife make a contract of this kind with her husband? It is provided in Section 1339 of the Civil Code that "Whenever a decree of separation is granted, the decree shall have the effect, during such separation, to reinstate the wife, whether the wrong-doer or not, in the right to sue or be sued, to alienate and convey property, to make contracts, and to do all other acts as if she were a *feme sole*." The question is, whether this statute is to be construed as authorizing contracts with any person, according the plain and natural meaning of the words, or as excepting by implication contracts with a husband.

The statutes elsewhere most similar to the statute now in question and which have been the subject of judicial construction are the so-called married women's acts. Under these acts there seems to be a great preponderance of authority in favor of the view that a married woman, even though not separated from her husband, may sue him in matters respecting her separate property, on the ground that such power to sue is necessary to secure to her the enjoyment of her property and effectuate the purpose of the statutes. The debt which was the basis of this agreement was the wife's separate property, and, therefore, it would seem that she could sue him for it. Could she not equally well arrange with him for the settlement of the claim peaceably? Does the policy of the law require that a wife should enforce her rights against her husband by litigation rather than by agreement?

But to reason more directly, the married women's acts elsewhere generally authorize a wife to contract as a feme sole only with reference to her separate property. If, therefore, such acts authorize her to contract with her husband with reference to her separate property, it may logically be inferred in the present case that the statute in question authorized the contract in question, not only because the subject matter of the contract was the wife's separate property, but because our statute is broader in that it is not confined to contracts respecting separate property, and also because there is much more reason for allowing a separated wife to contract with her husband than there is for allowing one who is not separated to do so.

While there is much difference of opinion upon this point, yet the preponderance of authority, as well as the plain meaning of the words of the statute, and the policy of the law at its present stage, support the view that a statute authorizing a married woman to contract "as if sole" or "as a feme sole," or as if unmarried," as variously expressed, authorizes her to contract with her husband. See Allen v. Hooper, 50 Me. 371; Savage v. Savage, 80 Me. 472; Albin v. Lord, 39 N H. 196; Beard v. Dedolph, 29 Wisc. 126; Hamilton v. Hamilton, 89 Ill. 349; Tomlinson v. Matthews, 98 Ill. 178; Robertson v. Robertson, 25 Ia 350; Williams v Harris, 54 N W (N. D.) 926; In re Kinkead, 3 Biss. 405; Bank of America v. Banks, 101 U. S 240

The exceptions, therefore, should be sustained and the demurrer overruled.

Honolulu, Oct. 29, 1895.

OPINION OF E. P. DOLE, ESQ.

I concur in the opinions of Chief Justice Judd and Justice Frear, first, that there was a sufficient consideration for the contract; second, that its validity depends upon law existing when it was made; third, that when this contract was made, a married woman judicially separated from her husband was empowered by Hawaiian law to make such a contract with him; and fourth, assuming that it is a Hawaiian contract, that she can maintain an action thereon in Hawaiian courts against the executors of his will.

Notwithstanding the able and very carefully considered opinions of Chief-Justice Judd and Justice Frear, I am not entirely satisfied that the contract is Hawaiian, rather than French; but, as I am satisfied that its validity under the French law is sufficiently well pleaded, my conclusion, for the purposes of this case, is the same whether the contract is French or Hawaiian.

I think that the exceptions should be sustained and the demurrer overruled.

A. S. Hartwell and W. L. Stanley for plaintiff.

F. M. Hatch and L. A. Dickey for defendants.

Honolulu, Oct. 29, 1895.

## In the Supreme Court of the Hawaiian Islands.

SEPTEMBER TERM, 1895.

REPUBLIC OF HAWAII VS. LEE YICK.

Before JUDD C.J., BICKERTON and FREAR, J.J. Submitted upon Briefs.

On a charge of having opium in possession it is not incumbent upon the prosecution to prove facts showing that its possession by defendant was unlawful.

Acts 12 and 77 of the Provisional Government restricting the importation and sale of Opium and preparations thereof are not unconstitutional.

OPINION OF THE COURT BY JUDD, C. J.

The defendant was convicted in the Circuit Court First Circuit at the last term thereof of the offense of having opium unlawfully in possession The case comes to us on exceptions to the presiding Judge's refusal to charge as requested by defendant's attorney and to the charge of the Court as given.

The main question raised is whether the prosecution was bound to prove, on this charge, such facts as would show that the possession of the opium by defendant was unlawful. The trial Judge held that the prosecution was not required to prove a negative—i. e, that the opium was not obtained from the Board of Health, etc, and that it was incumbent upon the defendant to show, if he could, that his possession of the opium was lawful.

So far as the public is concerned opium is contraband. Its importation and sale are forbidden by law Only the Board of Health can import it, and for medicinal purposes only. Physicians only can obtain it from the Board of Health, and can dispense it only medically. See Acts 12 and 77 of the Provisional Government.

In 1865 this Court held, in Rex. v. Gillingham, 2 Haw 750, that where a person is charged with selling spirituous liquors without a license the burden of proof was upon him to show that he had a license. This rule was based upon the proposition that where the subject matter of a negative averment lies peculiarly within the knowledge of the other party the averment is taken as true unless disproved by that party. *Id* and cases cited.

This principle has been followed in prosecutions for unlicensed sales of liquor and the same principle applies to the importation, sale and possession of opium.

If the defendant in this case acquired possession of the opium from the Board of Health or through other lawful channels it was a fact peculiarly within his knowledge and he should have shown it. This principle does not violate the presumption of innocence until proved guilty. There are often facts in connection with the proof of the possession of opium that show that it was unlawful. We held in Prov. Gov't. v. Gertz, 9 Haw. 293, that the unexplained presence of opium in defendant's other goods was *prima facie* evidence of his intent to import the same. See also Rex v. Ah Sing, 5 Haw. 553. We find no error in the Judge's rulings and charge on this point.

The above is the only point enlarged upon in defendant's brief, but there is also an exception taken to the trial Judge's overruling the objection made that the law under which he was charged is unconstitutional. The constitutionality of an opium law similar in terms to the present was the subject of discussion in Rex v. Yatsing, 3 Haw., 672, and the statute was upheld though attacked upon grounds similar to those preferred in this case Upon the subject of the title to an Act of the Legislature, we refer to In re Walker, 9 Haw., 172-3.

We therefore overrule the exceptions

A. W. Carter, Deputy Attorney-General, for prosecution; E. P. Dole for defendant.

Honolulu, October 28, 1895.

Good advice: Never leave the house on a journey without a bottle of Chamberlain's Colic, Cholera and Diarrhœa Remedy. For sale by all dealers. BENSON, SMITH & Co., agents forH. I.

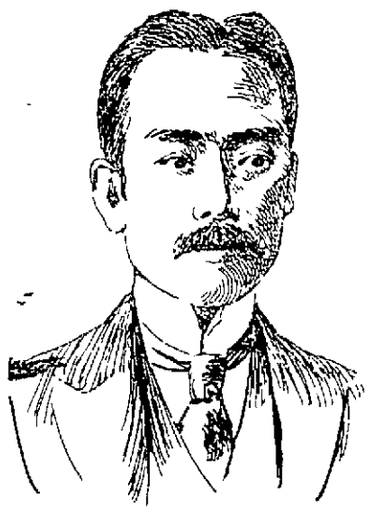
# A NEW CONSUL GENERAL

## Japan Changes Its Representative.

### MR. SHIMIZU RECALLED.

**H. Shinnamura Arrived Yesterday—The Labor Problem to Have Attention—Possibility of Abrogation of Labor Convention, Etc.**

Japanese Consul-General H. Shinnamura, with his wife and child and his two servants, were passengers by the Coptic Tuesday. Mr. Shinnamura relieves Mr. Shimizu, who has been recalled to



S. SHIMNNAURA, JAPANESE CONSUL GENERAL TO HAWAII.

Japan with Goro Narito, for four years secretary of the Legation here.

Mr. Shinnamura seems not above forty years of age, and a good many of those forty have been spent in important diplomatic missions in different parts of the world. He has served his Government in London and in New York, where he was consul-general; and for ten months prior to the Japan-China war he was Consul-General at the City of Mexico. He was summoned by cable message to Tokio while at the Mexican capital and then assigned to special duty with the second army, acting as advisor to the general-in-chief in all matters of a diplomatic character. In this position he was frequently called upon for advice in deciding some very delicate questions. He visited the Pescadores, and was in Formosa during the troubles there and was the governor's special advisor.

Mr. Shinnamura was met last night at the Hawaiian Hotel, where he is stopping with his family. When asked if he would let the people here know through the columns of the ADVERTISER how much truth there is in the rumors concerning the attitude of his Government toward Hawaii, he gave vent to his feelings by having a hearty laugh.

"I am glad to meet newspaper men, but I am always amused when they begin to ask questions about the relations between the Japanese Government and any other. You must believe, always, that the relations are pleasant, no matter what the real state of affairs may be."

"But, Mr. Shinnamura, the papers throughout the world have printed articles which lead one to believe that Japan, having been successful in the war with China, may seek other worlds to conquer. Your nation being so largely represented here naturally gives color to the scheme. Do you think that your Government has its eye on these islands with a view to some day taking possession?"

"Nothing is further from its thoughts, I can assure you. Naturally, these rumors have reached the Foreign Office in Tokio and nothing has been brought to us that has given us more real amusement than these reports. Japan has its eye on Hawaii, yes, but not in the sense that the rumors would indicate. The government watches the islands on account of the number of Japanese subjects here; there interests must be protected and for that reason, perhaps, it takes a place in the Foreign Office next to China and Russia."

"Speaking of Russia, Mr. Shinnamura, what was the state of affairs in Corea?"

"In a measure quiet; I believe the trouble is over and I believe also that Russia will not interfere. This you must understand is merely a conjecture and I do not wish to be quoted as saying it is a fact. Russia has peculiar ways and perhaps it is wrong to even think that that government will maintain a 'hands off' policy."

Asked regarding the labor convention between Japan and Hawaii he said:

"There has been more or less difficulty regarding that important question. The Japanese Government feels that the terms of the treaty have not been kept."

"Do you think the matter of abrogating the treaty has been seriously considered by your government?"

"Perhaps not seriously, but it has been considered. I have special instructions regarding the labor question, and it is one that will require careful consideration before any decisive action can be taken. I propose to investigate thoroughly the causes for complaint first. The views of the Hawaiian Government differ in many respects from those of Japan, and if the Government here cannot change them, even to the extent of living up to the terms of the treaty, why—"

"You will abrogate?"

"Probably, but, as I said before, it is a question that involves very careful consideration. You must know that Japan does not depend upon these islands as an outlet for its rapidly growing population. There are other places nearer home where they can secure employment and quite as advantageously as here. Complaints against the Hawaiian Government for breach of the treaty, or, correctly speaking, labor convention, have been made so often that the Japanese Government feels that steps should now be taken to have it settled definitely and forever. The relations, otherwise, between the two Governments are cordial, and I feel certain they will continue so and that the differences regarding labor will be amicably settled. You may say to your readers that there is not even a possibility of the people here becoming citizens of Japan through any act of my Government. If they wish to become such they will have to leave Hawaii and go over to Japan"

Mr. Shinnamura will present his credentials in the course of a day or two. He expressed regret at learning of the departure of Mr. Hatch, but felt, from what he had heard of Minister Cooper's reputation as a lawyer and judge, that there will be nothing but cordial relations between the two Governments.

## HOSPITAL FLOWER MISSION.

**Meeting Wednesday—Fair for a Free Bed.**

There was a good representation of ladies at the meeting of the Hospital Flower Mission in Y. M. C. A. Hall Wednesday afternoon. The main topic under discussion was the project of giving an entertainment in the nature of a fair for the purpose of endowing a free bed at the Queen's Hospital. It was thought to be a very good move, and the Mission decided that such should be held at the home of Mrs. F. M. Swanzy at 7:30 o'clock on the evening of November 26th. A feature of the entertainment will be a magic-lantern exhibition. Fancy flower, candy and ice cream and cake tables will be arranged for. Five hundred tickets will be printed and will be distributed for sale at an early date. The mere mention of the fact that the Flower Mission intends giving an entertainment is sufficient guaranty that the affair will be a success and that it will receive the hearty co-operation of all who take interest in the good work of that organization.

## ACCIDENT ON THE TUG.

**The Coptic Knocks in Her Bow—One Musician Faints.**

Shortly after 10 a. m. Wednesday the little tugboat Eleu swung the big O. & O. S. S. Copic around and headed her for the channel. This done she hauled in alongside her and the band stationed aboard struck up lively music in honor of Hon. F. M. Hatch who left for the coast on the Coptic. Among those aboard the Eleu were Minister King, Minister Cooper, Messrs. Soper, Potter, Oat, Rowell, C. A. Brown, J. F. Brown, Jacobsen, W. H. McLean, White and Capt. Paul Smith. Everything went well until the Coptic swung around and headed toward Diamond Head. The Eleu was not expecting the steamer to turn so soon and Captain Rice had his wheel hard port. There was no time to get out of the way and the stern of the Coptic struck the stern of the tug making quite an impression. Everyone on the tugboat made a profound bow and one of the band boys went so far as to faint in honor of the occasion. The tugboat concluded she had had enough for one day's experience and made for shore as fast as possible. In speaking of the matter Captain Rice said laughingly, "I think it was a cowardly trick for such a big fellow to hit such a small one, and that too in a most prominent place—the nose."

## IN MEMORIAM.

**Eulogy to Memory of Mother Hitchcock by a Friend.**

Mrs. Alameda E Hitchcock, wife of Hon. David H Hitchcock, died at the family residence on Waianuenue avenue in Hilo, Hawaii, on October 29, 1895, aged 67 years and 19 days. Mrs Hitchcock was an American lady of culture, education and refinement, and in the spring-time of life she was a teacher in the grammar schools of New York and Boston. But her young heart was touched by Cupid's arrow and her eyes turned longingly toward these islands as the harbor bar beyond which life held for her love and joy and peace. So setting sail at Boston she came "round the Horn" to become the wife of an obscure young lawyer, who since that time has made his name known all over the Republic. Arriving in the harbor of Honolulu, Mr. Hitchcock and a minister of the Gospel went on board and the brave little woman came ashore the wife of the man with whom she has walked hand in hand down the declivity of life's pathway for more than the third of a century, participating in the joys and sorrows of life rearing a large and respected family of boys and girls who are all now grown to man's estate, and all living but her namesake daughter, the wife of Dr. W. J. Moore, whose sad death occurred only a few months ago and from the affects of which Mother Hitchcock as she was familiarly called never fully recovered.

The immediate cause of death was physical exhaustion produced by gastric inflamation and inability to retain nutriment. Mrs Hitchcock had never been ill before during her married life and was able to go about every day until within four days of her death. At an age greater than most of us may hope to attain, and when the human faculties are usually dulled and relaxed by the burden of years, she seemed vigorous and her faculties undimmed by the flight of time and with surprising alertness she vigilantly watched over the home of which she was queen until the final summons came, when she cheerfully responded: "I am all right; I am ready," and when the boatman with shadowy oar neared the shore her pure spirit accompanied him over the dark, wide river to the further shore, where she will dwell in that sequestered valley of eternal life and where the spiritual flowers of eternal spring time will bloom with perennial beauty and glory forever more.

The body was dressed in a simple white gown, and Mother Hitchcock looked more like some one sleeping sweetly in the full vigor of robust health than one whose sleep knew no waking. No one could have determined from the placid features that no whisper could come back to say a word to loved ones left behind. She had whispered her last good night: her voice was hushed until the judgment day.

The billows of floral offerings attested with greater force than human words the high esteem in which she was held by every one. Services were held at the residence by the Rev. Mr. Hill of the American church, assisted by his excellent choir.

The honorary pall-bearers were Hons C. E. Richardson, Jos. P. Sisson, Rev. S L. Desha, Hon. S. L. Austin, Hon. G. W. A. Hapai and C. C. Kennedy, the active pall-bearers being Arthur Richardson, Dr R. B. Williams, G. K. Wilder and E. V. Le Blond.

The interment took place in the beautiful Hilo cemetery, whither her remains were followed by a large concourse of sympathizing friends, where the black cloak of earthly night was spread over her mortal remains, and she now sleeps where gentle hands have laid her, and we reverently bow head and knee over the lowly hillock and bedeck with flowers and bedew with tears the turf which will grow nowhere else so green. May God in his wisdom grant peace to the mind and solace to the heart of her bereaved family, and rest to the soul of Almeda E. Hitchcock is the fervent prayer of a

FRIEND.

# Hawaiian Gazette.

SEMI-WEEKLY.

ISSUED TUESDAYS AND FRIDAYS

W. R. FARRINGTON, EDITOR.

FRIDAY, - NOVEMBER 8 1895.


ONE of the latest items in Governor Altgeld's pardoning record is the release of 112 girls from an industrial school in Evanston, Ill. When the governor goes out of office there will, undoubtedly, be plenty of work for the reformatory and prison managers in gathering up the stray wanderers which have been turned loose on the country.

Numerous complaints are being made about town that the sanitary conditions of which the people have been justly proud since the general house cleaning, are relapsing into a state of innocuous desuetude. It is very necessary that a strict watch should be kept over the districts most liable to revert to former conditions. The city has been cleaned once and ought to be kept clean.

AT the recent meeting of the Social Purity Congress in Baltimore, Francis Willard, president of the W. C. T. U., remarked that the bicycle is one of the greatest allies of social purity. In Chicago saloon keepers and theatrical managers are cursing the bicycle because the young folks are riding out into the country instead of patronizing their resorts. If this is true, bicycle manufacturers and bicycle agents ought to be placed on record as the greatest missionary workers of the age.

## NEW SOUTH WALES AND JAPAN.

A clause in the British treaty with Japan, which provides that the stipulations of the treaty shall not be applicable to certain enumerated colonies, including the Australian colonies, unless those colonies see fit to accept the conditions within two years of the ratification, has given New South Wales its first problem of foreign policy to solve. New South Wales has the opportunity to accept or reject the treaty, and, judging from appearances, the colony is utterly at a loss to know what to do with it. Already one year has elapsed since ratifications were exchanged, and still no decision has been reached. On the 11th of September the matter came up in the Legislative Councils of the colony, and the Attorney General stated that the treaty bristled with advantages, but, on the other hand, there were some dangerous clauses, and what the Government had to do was to get the benefits without the disadvantages.

The "dangerous clauses" are those which secure to the subjects of the two contracting powers full liberty to enter, travel or reside in any part of the dominions of the other and immunity from any higher imposts or charges than those imposed on native subjects. The acceptance of this condition precludes the passing of any laws to restrict Japanese immigration. Here lies the difficulty. The agitation against Japanese immigration is on the increase, and there will undoubtedly be an attempt to "gain concessions" from the present wording of the treaty. The colonies are anxious to extend their trade with Japan, but they have in view a protective policy which it is not reasonable to believe Japan will accept.

The feeling existing in the Australian Colonies against the Japanese is on much the same plane as that which Commissioner Fitzgerald of San Francisco is seeking to inculcate among the people of the Coast. It is a desire for reciprocity without in turn reciprocating, and is by no means becoming to the good sense of the agitators.

### Of the World.

Higgins "Do you think the earth is round?"

Wiggins "Blessed if I know. Judging from my experience with the people who live on it, I'm pretty sure that it isn't square."

## HAWAIIAN CHARACTERISTICS IN THE SCHOOL ROOM.

At the Indian Teachers' Convention in Sioux City last July, Professor Riggs read an essay on the question, "What does a child bring to the school room intellectually?" The essay is an original and interesting discussion of the question and is published in full in the October number of the Southern Workman, printed at the Hampton Institute, with which Gen. S. C. Armstrong was so long connected. There are many points in the paper which the teachers in schools for Hawaiians would do well to read. Here are some characteristics noted by the essayist.

An Indian child looks upon the world as a place for him to raid, and he is abnormally destructive. He pulls things to pieces to gratify inherited tastes for destroying things. He never analyzes with a purpose to find out the why and how things are put together. Nor does he seem to notice resemblances or differences in his destruction. As the Indian is improvident, so the child notices no usefulness which is not immediate. Mere facts, however interesting in themselves, secure little attention from Indian pupils. The relationships of things have a fascination for him, which the essayist considers as akin to the Indian passion for tracing out and memorizing family relationships of the members of the tribe. But the relationship of cause and effect is one that excites very little curiosity.

If any thing or action is beyond immediate comprehension, it is classified as something mysterious and no further attention given. He cares nothing about the life or products of other people. His mental attitude is that of utter indifference to white folks' belongings; he is satisfied with Indian ways and possessions. But he has a most remarkable perception of locality and direction, and quickly individualizes prominent points around his point of view. Strange animals interest an Indian child more than plants or minerals. The habit of eating, or stuffing at one time, not at regular intervals makes a full stomach absorb for the time being all brain activity. Abstract conceptions, fundamental principles are outside the range of his mental processes.

English primers bring very little vividness to an Indian's mind. "Gracie chases Zip about the orchard." Zip—name of dog? Dogs are to eat, like chickens: why give them a name? Orchard—whoever built a fence around trees." Reasoning, the comparison of judgments, comes late in an Indian's mental development, if it comes at all. Teachers are in too much of a hurry to get out of simple mathematical judgments, and introduce too early processes of mathematical reasoning.

Prof. Riggs accounts for the lack of responsibility in an Indian's mental make-up, from the absence of the idea of property, something possessed and preserved. In the wastefulness characteristic of the uncivilized races, we see a reason for the failure to comprehend the great lesson of life, that we are in a world where our limitations impose upon us the necessity of being governed by some other motive than individual momentary desire. Civilized society seeks the good of the whole, not the gratification of any one's appetites or passions.

## JAPANESE EMIGRATION.

The Nichi Nichi Shimbun of Yosohama published recently a short article which purports to be the substance of a report made by Japanese Consul Shimizu on the Japanese emigration to this country. Mr. Shimizu says that public opinion in Hawaii is divided.

"There is, first, the view of the traders, who are deriving great profits from the sugar and coffee plantations on which Japanese labor is employed; secondly the view of the politicians who are in favor of American annexation and who regard with distavor the large influx of Asiatics that is taking place. The traders maintain that the prosperity of the Sandwich Islands is principally owing to the fact that planters, having been for many years supplied with cheap labor, have been enabled to grow sugar and prepare it for export at a cost that leaves a good margin of profit. But if the Hawaiian Government were to place any obstacles in the way of the planters utilizing the facilities offered to them by such countries as China and Japan the consequence would be a general collapse of the whole trade from which the revenue of the country is now derived. Among immigrants, the planters prefer the Japanese to the Chinese and Portuguese, on the ground that they are easily managed and that they do more work in proportion to wages paid them than laborers of any other nationality. Hence, if the planters have their way, Japanese immigrants will always be welcome in Hawaii. But there is no disguising the fact that the Hawaiian Government are implacably opposed to the policy of the planters, and regard with some apprehension the presence of a multitude of Asiatics in the islands. The objections that these politicians have to the employment of Eastern laborers are the stereotyped arguments so often urged in America and Australia; arguments which, when closely examined, are found to depend upon nothing but race prejudice. In these days of keen competition, it is little likely that politicians influenced by such prejudice will be allowed to place serious obstacles in the way of the further development of an industry to which Hawaii owes all its importance and prosperity."

Mr. Shimizu has told part of the story but it is clearly evident that he has treated the subject from only one point of view and has exaggerated not a little in many instances. He fails to note that many of the planters or traders as he classes them are among prominent advocates of American annexation. Furthermore it cannot be said that the Hawaiian Government is implacably opposed to the policy of the planters.

While the Asiatic population may be a necessary factor in the development of many of our industries it is not necessary to overrun the country with these people. Mr. Shimizu evidently misinterprets the building up of American systems, which can only be done by the introduction of American labor, as the result of racial prejudice, and in so doing makes a great mistake. The Chinese and Japanese have their place in this country and always will have, and it is the height of folly to state that an attempt to introduce American labor to build up the smaller industries is evidence of ill feeling toward the people of the Eastern nations. With American annexation in view it is manifestly proper that the people of this country should put forth every endeavor to create industrial conditions that will be in sympathy with those existing in the United States.

## A CASE OF CONSCIENCE.

Among the incidents of the late cholera visitation is one which reveals the energy of conscience and its supreme power in the disciplined soul. A conscientious citizen living not far from Punahou had been in the habit for years of consuming a dried herring for his Sunday morning breakfast. The herring had been lawfully imported, or smuggled, into this hamlet of virtue and revolutions, in order to tickle the appetites of men who reside here for mercantile, missionary and multifarious purposes, and was believed to be free from the cholera germs.

When the Board of Health forbid the use of fresh fish, the sensitive conscience of this law-abiding citizen put before him, in all its ghastly nakedness, the question whether or not the eating of the dried herring did not come within the spirit, if not the letter, of the law. Instead of seeking the advice of lawyers he asked an affable and learned member of the Board of Health his opinion, and was positively informed that the germs of the cholera could not be taken into the system by simply smelling. Thereupon he placed the dried and ancient fish upon his table every Sunday morning and smelt its pungent and delicious odor until the tabu was removed. On the happening of that event he consumed it with evidences of the wildest gluttony, and with the deepest feelings of gratitude he sat down and addressed a memorial to the Executive Council asking that his name be placed on the roll of the ever-faithful patriots, and that in distribution of the next periodical series of "testimonials" granted for eminent services to the Republic, his name should not be forgotten.

## THE RIGHT OF SUFFRAGE.

There are some points brought out in the discussions in the Massachusetts papers on the pending question of extending to women municipal suffrage, which are of interest as affecting similar questions of rights and expediency in the Hawaiian Islands. At the November election in Massachusetts all present male voters and as many women as are now entitled to vote on the election of school committees by previous legislation sixteen years ago are now asked by balloting "yes" or "no" to answer the question: "Is it expedient that municipal suffrage be granted to women?"

An active canvass has been in progress, meetings held and sermons are preached urging all to vote the affirmative of this question. It has been submitted to popular vote, previous to legislation, much on the same principle as the Swiss referendum submits finally to popular vote the ratification of legislation proposed. The demand is based on the idea of the perfect equality of man and woman in all the rights and duties of life. It is put forth as the logical last step in the advances toward such equality made in these recent years in technical industries, the learned professions, the higher education.

Self-ownership and self-direction is the goal towards which all these efforts point. Man goes limping along while he might be striding forward. The superior authority claimed for the male sex is as disastrous to the one who exercises it as to the one who submits to it. The manly man is he who wants woman at his side as counsellor, helper, and guide, with her finer instincts, stronger attachments, upward look. Woman's suffrage is coming as sure as day follows night.

Then comes the statelier Eden back to men;
Then reign the world's great bridals, chaste and calm:
Then springs the crowning race of human kind.

But on the other hand some of the foremost citizens have united sending out a circular letter to Massachusett's voters, advising against this extension of the present right of suffrage. The United States Supreme Court has rendered a decision, endorsed by all sound, logical, judicious thinkers, that no man, nor any woman either, has a natural, inherent title as such to the exercise of the right of suffrage. The preamble to the constitution of Massachusetts embodies this statement: "The whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good." That expresses the distinction between the people and the citizens, which obtains in the Republic of Hawaii as well in the State of Massachusetts. The incapacity of women for all the duties of citizenship is a fact of nature, not a condition created by legislation. It is illogical, unnatural, inexpedient, that the power which makes the laws should be vested in a body different from that which has the power to enforce the laws. Equality of opportunity does not mean identity of function. The offices which women fulfil in the organism of the State are different from those of men, while, at the same time, they are indispensable in their normal conditions and relations. There is evident disadvantage in merely doubling the number of votes without increasing thereby proportionally the power of the State. Such an extension of the suffrage would not promote the welfare of women nor the well-being of society. It would be inimical to the highest development of that family life which is the basis of the growth and prosperity of the State. The present division of duties and privileges between the sexes is founded on reason and on natural conditions. Quality, not quantity, is the pressing need. A higher standard of patriotism is the duty of the hour for both men and women, that shall put forward the common good and not the individual advancement, as the goal of united desire, effort and attainment.

## CONVERSION MEANS WORK.

George M. Hepworth, one of the "Sunday editorial" writers of the New York Herald says of the converted man: "To be converted is simply to be turned toward God, and the converted man is one who deliberately comes to the conclusion that it is better to obey God's laws than to break them. With that definition the word has a peculiar significance. Whether orthodox or heterodox, we all admit that the mental struggle which ends in the conviction that faith in and submission to a superintending Providence will produce higher results than uncontrolled selfishness is a struggle which every man who lives ought to make. There is no room for difference of opinion on this subject, provided we look at it in a broad generous way. My impression is that the Church has done the world a great injury by introducing into that experience a mysticism which drains from it all philosophy and common sense. There is no magic in the new birth, but there is glory, peace, happiness and final victory. It is discouraging to a man to be told that everything will go well with him after his conversion, for that cannot be true until the laws of the universe are repealed, and if you deceive him on that point his last condition may be worse than his first. It is safest to tell the truth always."

Unfortunately for the many divisions of the Protestant church and the cause of Christianity many people have been brought into the fold while under the influence of an outburst of religious enthusiasm, and believing that the trials and sorrows of life are to be no more after once having taken the first step. After reverting to the humdrum of daily routine, they find life to be much the same after all, and occasionally decide that religion does not fill the aching void as they had anticipated. They place the blame at the door of religion, when as a matter of fact the fault is in the manner in which they started out. To the thoroughly converted man, "Life is real, life is earnest," as never before. He has more to combat with because he has placed his standards of life higher. His natural tendency is to return to his former easy-going way on finding that he cannot depend upon the vagaries of momentary enthusiasm. It is absolutely necessary for a man to decide at some juncture whether he will sacrifice for the right or live a selfish life. If the latter, he plays on a harp with broken strings: if the former, he is a warrior with mailed armor, but still a warrior. The fight is before him, and he must do himself credit in the battle. Do not persuade him that he has nothing to do, for he has everything to do; but he will do it with a new spirit and a new courage.

## In the Supreme Court of the Hawaiian Islands.

MARCH TERM, 1895

ALLEN & ROBINSON v. F H. REDWARD AND HAWAIIAN LODGE, No 21, OF FREE AND ACCEPTED MASONS.

Before BICKERTON and FREAR, J. J., and MR. W R. CASTLE, of the Bar, in place of Judd, C J., disqualified.

Findings of fact by the trial court, jury waived like the findings of a jury can not be set aside if there is sufficient evidence to support them.

Payments made under a building contract by the owner to a material man upon the order of the contractor, may by agreement between the contractor and material man and in the absence of any other agreement with the owner be applied first to cash advanced by the material-man for labor and then to materials furnished.

The lien provided by statute in favor of a sub-contractor or material man is not limited to the amount payable under the original contract to the principal contractor.

An abandonment of the work by the contractor after payment in full for the proportion of work then done is not a bar to the enforcement of a lien for materials furnished by a sub-contractor before the abandonment

An agreement of the contractor to give sufficient evidence that the premises are free from liens and to indemnify the owner for payments made in discharging liens does not estop a material-man from enforcing a lien

An assignment to the material-man by the contractor of all moneys payable under the contract, accepted by the owner "subject to all the conditions of the contract," does not estop the material man from enforcing a lien.

A material man is not entitled to a lien for material which, though furnished to a contractor for a building, never was incorporated in the building but was delivered at the contractor's shop and by him disposed of for his own benefit.

The notice of a lien for material furnished by a sub contractor should show the nature of the material for which the lien is claimed.

OPINION OF THE COURT, BY FREAR, J.

The defendant Redward contracted with the defendant Hawaiian Lodge to do, for $7234, the carpenter work, wrought and cast iron work and plastering upon the building known as the Masonic Temple situated on the easterly corner of Hotel and Alakea streets in Honolulu. The contractor abandoned the work before its completion and after $4700 had been paid under the contract, this being more than was payable for the proportion of work then done The Hawaiian Lodge thereupon completed the work at a cost exceeding the original contract price The plaintiff, S. C Allen, doing business under the name of Allen & Robinson, claims to have advanced $2292 cash for labor and to have furnished materials of the value of $5194 45, including importation charges, to the contractor for this building. The $4700 paid under the contract was all paid to the plaintiff upon the order of the contractor. The plaintiff now sues for a balance of $2286 45 and interest thereon and claims a lien on the building and lot, under the "Act to Provide for Liens of Mechanics and Material men," Ch 21, Laws of 1888.

The case was tried in the Circuit Court of the First Circuit, jury waived, where judgment was rendered for the plaintiff for $2834.79, besides interest, this being the amount claimed less $51 66, the value of materials shown not to have been delivered and the lien was sustained for this amount upon the building and premises of the defendant Hawaiian Lodge.

The twenty-three exceptions enumerated in the bill of exceptions may be considered in substance under a few heads.

First, the exceptions to the following findings of fact made by the trial court, namely that all the material in question were delivered except certain items of the value of $51 66, that the plaintiff advanced cash to the contractor for labor, that there was an agreement between the contractor and the material-man that payments should be applied, first, on account of the cash advanced, and then on account of the materials furnished; that the payments were so applied; that the lien claimed was not for cash advanced; that there was not such confusion in the account that items for which the law gives no lien could not be separated by inspection, and that the materials were not furnished solely on the credit of the defendant Redward

These findings of fact, regarded, as they must be, as in the nature of a verdict of a jury, cannot be set aside, there being sufficient evidence to sustain them

Secondly, evidence of the agreement relating to application of payments was properly admitted In the absence of an agreement upon this subject with the owner, it was competent for the contractor and material-man to agree upon the application of payments made to the latter upon the order of the former. The rules relating to the application of payments in general apply to cases of this kind Phill Mec Liens, Sec 287; 2 Jones, Liens, Sec 1307, 1 Am Ld, Cas. 3rd Ed., 286, 299

Thirdly, the Circuit Court correctly held that the amount for which the property may be charged with a lien in favor of a subcontractor or material man is not limited to the amount payable by the owner to the contractor.

In a few States, subcontractors are given no lien at all upon the property, but a lien only on the debt payable by the owner to the contractor In many States a direct lien is given on the property, but with an express limitation to the amount of the original contract price Under these two classes of statutes, the right of the material-man has generally been held to be controlled by the state of the account between the owner and contractor—the material-man or sub contractor being merely subrogated to the rights of the contractor.

Under other statutes a direct lien is given upon the property, either without qualifying or limiting expressions as to amount, as in many States, or with expressions clearly showing that there is no limit, as in a few States Under such statutes, courts have generally held that the material-man may have a lien for the reasonable value of the materials furnished by him, even though in excess of the amount payable to the principal contractor under the original contract

Our statute is of this nature. It gives a direct lien upon the property to the sub contractor without limit with reference to the original contract price The statute provides.

"Section 1 Any person or association of persons furnishing labor or material to be used in the construction or repair of any building, structure, railroad or other undertaking, shall have a lien for the price agreed to be paid for such labor or material (if it shall not exceed the value thereof) upon such building, structure, railroad or other undertaking, as well as upon the interest of the owner of such building, structure, railroad or other undertaking in the land upon which the same is situated."

This section of the statute gives a lien to "any person furnishing material" and makes no distinction between contractors and sub-contractors. Other sections, 5 and 6, show clearly that subcontractors were intended to be included.

The lien is "for the price agreed to be paid" This may mean the price agreed either between the owner and contractor or between the contractor and material man. It would naturally mean the price agreed to on one side at least by the "person furnishing the materials" and that would be the sub contractor if the materials were furnished by him.

There is not only no express or implied limit of the sub-contractor's lien to the price agreed between the owner and contractor, but the clause "if it shall not exceed the value thereof," would seem to have been inserted chiefly for the purpose of preventing collusion between the contractor and sub-contractor whereby they might otherwise bind the owner beyond the real value of the materials or labor. This clause would hardly have been inserted to protect the owner against his own agreement. Indeed, he would ordinarily be estopped from saying that the price he agreed to pay exceeded the real value.

Again, as a rule the price agreed upon between the owner and the contractor is a lump sum for all labor and material covered by the contract, and in such cases the only "price agreed to be paid for such labor or material" as may be furnished by the several material-men or sub-contractors is the price agreed between them and the contractor

Section 6, which provides that when the work or material is furnished to a contractor, that is, by a sub-contractor, laborer or material-man, "the owner may retain from the amount payable to the contractor sufficient to cover the amount due or to become due to the person or persons who filed the lien," may, at first glance, seem to indicate that the Legislature contemplated that there would be sufficient to satisfy all liens out of the original contract price, and that therefore there was no intention to give any further right. But this inference by no means follows. The sub-contractor is given a lien directly on the property, not on the debt payable to the contractor; the owner is not obliged to retain the money; he is merely permitted to do so as one means of protection to himself against the wrong or mistake or inability of the contractor. He is not permitted to retain the money contrary to the provisions of his contract, except after the notice of the lien has been filed, and yet that notice may be filed and proceedings commenced to enforce the lien at any time within three months (Sec. 2) after the completion of the building for which the materials were furnished; that is, the notice may be filed and the lien enforced after the time when under the usual terms of building contracts the contractor would have been paid in full. It is clear, therefore, that Section 6 authorizes a retention of money payable to the contractor, only as a protection to the owner so far as there is any that may be retained, and that it does not imply that sub-contractors are to be bound by payments made to the contractor according to the terms of the contract

We are aware that a different view has been taken by some courts See Fullenwider v. Longmoor, 73 Tex 480; Burt v. Parker County, 77 Ib 338; Knowles v Joost, 13 Cal 620; Renton v. Conley, 49 Ib. 187. The statutes under which the Texas and early California decisions were rendered, while resembling our statute somewhat, yet differed from it in several respects,—whether sufficiently to justify the decisions made under them, we need not say. The wording of our own statute as well as the decided weight of authority requires us to hold that the sub-contractor is not thus limited The later California decision above cited appears clearly to have been erroneous under the statute then in force

The Supreme Courts of Nevada Washington and New Mexico refused to follow the Supreme Court of California in construing their statutes which were copied from the California statute See Hunter v. Truckee Lodge, 14 Nev, 24, and Spokane, etc, Co v McChesney, 21 Pac R (Wash, 198, in which a similar decision of the Supreme Court of New Mexico is referred to, also Colter v. Frese, 45 Ind, 96 and Henry, etc., Co. v Evans, 97, Mo 47 In these cases the California and other decisions are discussed

Statutes of this nature are sustained from the Legislative view, in point of policy, on the ground that an owner of property ought to compensate those who add to its value by furnishing materials for its improvement, and that he may protect himself from liability beyond the contract price by employing only such contractors as are financially responsible, or by withholding from them such part of the contract price as may be sufficient to satisfy liens, or by requiring them to give bonds for the delivery of the property free from liens, or by other means The tendency of recent legislation seems to be to limit the lien of the sub-contractor to the amount of the original contract price unpaid at the time when the notice of the lien is filed. But courts must construe statutes as they find them.

Fourthly, it is obvious from the above reasoning, that an abandonment of the work by the contractor does not work a forfeiture of the rights of a sub-contractor with reference to materials furnished before the abandonment The case would, of course, be otherwise if the statute merely subrogated the sub contractor to the rights of the contractor.

Fifthly, it was provided in the contract that the contractor should before each payment, if required, give sufficient evidence that the premises were free from all liens, that if at any time there should be any liens for which the owners might be liable they might retain from the moneys payable to the contractor sufficient to indemnify them, and that if there should be any such claim after all payments were made the contractor should refund to them all moneys that they might be compelled to pay in discharging the liens These provisions might estop the contractor from filing a lien, but they do not estop a sub contractor from doing so They imply, on the contrary, that such liens may be filed and provide for indemnity in case they shall be filed Evans v Grogan, 153 Pa. st 121, Creswell Iron Works v O'Brien, 156 Ib. 172.

The assignment by the contractor to the plaintiff of all moneys payable under the contract was accepted by the Hawaiian Lodge "subject to all the conditions of the contract" This did not estop the plaintiff from filing a lien. It did not make him a party to the contract. The contract itself was not assigned, but only the moneys payable under it, and, no doubt, the plaintiff could not recover on this assignment any moneys beyond what would otherwise have been payable to the contractor. But the present claim is not for moneys payable by the terms of the contract; it is for the enforcement of a lien under the statute.

Sixthly, certain stairway material, of the value of $100, was delivered, not at the building, on which the lien is claimed, but at the shop of the contractor, who disposed of the same in satisfaction of a claim for rent against himself.

Courts elsewhere are about equally divided upon the question whether a lien may be sustained for material sold for, but not actually incorporated in, a building. By some courts it is held that the contractor is the quasi agent of the owner, that the material-man is justified in trusting him, the contractor, inasmuch as the owner has presumably selected him as one in whom confidence may be reposed, and that it would be unjust to require the material-man (and impracticable for him) to follow up the material and prove that it was all used in a particular building

We cannot go so far. The owner does not, either expressly or by implication, give the contractor any authority to incur liability on his behalf for materials, but on the contrary he expressly stipulates that the contractor himself shall furnish all the materials and do all the work for a definite sum. The statute, it is true, makes the contractor the agent of the owner, against the wishes of the latter, but to a very limited extent only. The material-man is not justified in relying upon the honesty of the contractor because the owner has to some extent done so He is not bound to sell his materials and he must form his own judgment of the integrity of the contractor. He is sufficiently protected, as against the owner by the presumption that the materials were actually used for the purpose for which they were sold, throwing the burden of proof upon the owner to show the contrary If the materials were sold directly to the owner or to the contractor with the express approval of the owner for use in a particular building, the latter would probably in most cases be estopped from showing a different use, but where the sale is to the contractor without the express approval and perhaps without the knowledge of the owner, and the materials are not delivered at the building, and a misapplication is made of them, it would certainly be unjust to the owner to hold him liable The contractor is the agent of the owner for the purpose of purchasing suitable materials to be put into the building but not for the purpose of purchasing materials for his, the contractor's, own benefit The theory of the statute is that the material man may follow his material and hold liable him into whose building it has become incorporated and the value of which it has enhanced. This object does not require that the owner should be held liable for material which, through the wrong of the contractor, never went into the building. In case of loss under such circumstances, it is, in our opinion more just that, as between innocent parties, the loss should remain where it falls The material man has duties to perform for himself as well as privileges to be enjoyed at the expense of others He cannot act with carelessness and throw the loss, if any, on innocent third parties The statute is to be strictly construed as being in derogation of the common law and arbitrarily giving preferences to certain creditors for claims of no greater merit than others which are left unsecured See Lucas v Redward, 9 Haw. 23. The statute, which gives a lien to persons "furnishing labor or material to be used in the construction or repair of any building," is easily capable of this construction. See Deardorff v Everhartt, 74 Mo, 37, Clapin v Paper Works, 30 Conn. 461; Hunter v Blanchard, 18 Ill,, 318; Sylvester v. Coe, etc, Co, 80 Cal, 510, Weir v. Barnes, 57 N. W. (Neb), 750; Lee v. King 13 So (Al) 506, Taggard v Buckmore, 42 Me, 77

Lastly, the Circuit Court sustained the lien for certain columns, plates, girders, grills and gates of the value of $1145 90, and for windows, doors, astragals, transoms, balusters, sash, ventilators, blinds and sand, of the value of $1646 70. The objection to the allowance of these items is, that they were not covered by the description of the materials in the notice of the claim of lien required by the statute.

In the notice the lien was claimed "for materials furnished, to wit, lumber and hardware" The materials in question do not come within the definitions of the terms "lumber" and 'hardware,' as found in the Century and Standard dictionaries, and as given in this case with reference to these particular materials by persons familiar with these terms as used in these islands the architect and the contractor under the building contract in question and the manager of the plaintiff's business. This was also apparently the finding of fact by the trial Judge, who disposed of the point on the question of law The argument is that the statute is sufficiently complied with by a claim for "materials" only, and that the words "lumber and hardware" may be treated as surplusage.

A partial enumeration which purports to be a complete enumeration is worse than none at all, because it is misleading See Whittier v Mill Co., 38 Am St Rep (Wash) 149 And even if a claim merely for "materials" were sufficient, there would be considerable ground for limiting a person who did not make such claim, to the claim actually made He ought not to expect more than he claims, especially if his claim is misleading.

But, is a claim merely for "materials" sufficient? The statute requires that the "notice shall set forth the amount of the claim, the labor or material furnished, a description of the property sufficient to identify the same, and any other matter necessary to a clear understanding of the same."

Many statutes elsewhere upon this subject require a full or itemized account, but our statute, like some others, does not go so far In Lonkey v. Wells, 16 Nev. 271, the statute required the material man to file a claim "containing a statement of his demand." The lien was claimed for "material, to wit lumber, doors, sash, blinds moldings, castings and mill work" The Court held this a sufficient description, as it showed the "nature and character" of the demand. That our own statute does not require a full itemized statement is implied by the requirement of Section 5, that "the defendant shall be served with a detailed specification of the claim, provided that no such specification shall have been furnished before proceedings were commenced"

It seems to us, however, that the nature or character of the materials should be shown The statute requires the notice to "set forth * * * the material furnished" This means more than that the claim may be simply for "material" It means at least that the class or kind or nature of the material should be shown The provision that the notice shall set forth "any other matter necessary to a *clear understanding* of the same" also bears out this construction While the words descriptive of the materials furnished should be construed liberally, yet no materials should be included which do not fairly come within the generally accepted definitions of those words.

The statute is artificial, arbitrary It gives a material-man exceptional privileges, but it gives these only on condition that he shall comply with the terms of the statute. The statute provides that the "lien shall not attach" unless notice, of the character described, is filed. As has been already said, the statute is to be strictly construed. It is in the power of the material man to give a proper description of the materials he has sold. It is reasonable to require him to do so, in view of the extraordinary favors extended to him And this should be required in justice to the owner, purchasers, incumbrancers, other material-men and all other persons whose interests may be affected by the lien. The reason has greater force when, as in this case, the materials are furnished, not to the owner himself, but to the contractor and perhaps without any knowledge on the part of the owner See Russell v Bell, 44 Pa. St 44; Phill., Mec Liens, Sec 349 If the lien were claimed by the contractor for all the labor and material furnished for a building under an entire contract, a more general description might perhaps be sufficient under the statute.

We find no ground for disturbing the judgment as against the defendant Redward, but as against the defendant Hawaiian Lodge the judgment is set aside and a new trial ordered

While fully concurring in the result arrived at in the foregoing opinion, which I feel compelled to do under our statute and the authorities cited, yet I feel strongly that our statute should be so amended as to specifically limit the liability of owners of buildings under liens filed by mechanics and material-men, this having been done in many of the United States and being a matter which should be controlled by local statute

RICH. F BICKERTON.

F. M Hatch and W A Kinney for plaintiff; A W Carter and C Brown for defendants

Honolulu, October 31 1895



## BY AUTHORITY.

### Members of the Tax Appeal Boards

Commissioned by the Minister of Finance for 1895.

FIRST DIVISION, ISLAND OF OAHU.

William F Allen William A Bowen

SECOND DIVISION, ISLAND OF MAUI, MOLOKAI AND LANAI.

D L Meyers F W Hardy

THIRD DIVISION, ISLANDS OF HAWAII

| | |
|---|---|
| South Hilo | W S Terry, W A. Hardy |
| North Hilo | Richard Ivers, D Hoakimoa |
| Hamakua | D Forbes, R C Blackow |
| South Kohala | Wm Hookuanui, Geo Lincoln |
| North Kohala | Henry Renton, Geo. Hall |
| North Kona | C. D. Miller, D S Lima |
| South Kona | D S. Waiau, H W Greenwell |
| Kau | T C Wills, J Ikaaka |
| Puna | A. Sunter, L Desha |

FOURTH DIVISION, ISLAND OF KAUAI AND NIIHAU.

W G Smith, H D Wishard

(Signed) S M DAMON
Minister of Finance

Finance Department November 4 1895
1141-2w

For the information of the public the following resolution of the Executive and Advisory Councils of the Republic of Hawaii, passed July 12th, 1894, is republished

*Resolved*, that the President and members of the Executive Council shall be officially addressed simply by the titles of their respective office, thus, "To the President," or "Mr President," and similarly the members of the Cabinet The terms "Excellency," "Honorable," and words of like import shall not be used in officially addressing the members of the Executive Council.

1700 3t

**Interior Department.**

BUREAU OF CONVEYANCES,
HONOLULU, Oct 28, 1895

MR D McCORRISTON has this day been appointed an Agent to Take Acknowledgments to Instruments for Record for the Island of Molokai

THOS G THRUM,
Registrar of Conveyances

Approved
J A KING,
Minister of the Interior
1703-3t

The following gentlemen have this day been appointed members of the Board of Fence Commissioners for the District of Makawao, Island of Maui

W F Pogue,
John Wagner,
A Tavares, Jr
J A KING,
Minister of the Interior.

Interior Office, Oct 28 1895. 1703-3t

**Foreign Office Notice.**

The President directs that notice be given that

HENRY E COOPER Esq

has this day been appointed Minister of Foreign Affairs and Attorney General ad interim vice F M Hatch resigned

GEORGE C POTTER
Secretary Foreign Office

Foreign Office November 6th 1895
1785-3t

The Daily Advertiser 75 cents a month Delivered by carrier




NEWSPAPERARCHIVE®

# MR. WILLIS AT HILO.

Preparations for Reception by American Residents.

DOUBLE WEDDING AT WAIAKEA.

Scotch Lassies Who Came Across Ocean and Continent—Henry Deacon's Friends Welcome Him Home. Funeral of Mrs. Hitchcock Notes.

HILO (Hawaii), Nov. 4.—The gayest party of the past week was a genuine old-fashioned surprise party at Pepeekeo on Friday evening, tendered to Henry Deacon, manager of Pepeekeo plantation, complimentary to his recent return from the Coast. The arrangements were in the hands of his bachelor friends, who, although they sent out invitations to all of Mr. Deacon's friends, both far and near, were most successful in keeping a profound secret to the honored host. Over one hundred people joined in the festive dance to do honor to the occasion. Early in the evening a supper was served, and dancing continued until nearly 3 o'clock in the morning, when all sat down to a sumptuous luau. It was daylight when giddy Hiloites and residents of every plantation for miles around started for their homes.

On Saturday evening there was a "meeting of the clans," as one of the Scotch friends reported the affair. The occasion was a double wedding and the joyful celebration of the happy event. Some forty or more friends of the young folks gathered at the residence of George Chalmers at Waiakea, and there witnessed the marriage of Miss Nellie Gray and George Low, of Honohinu, and Miss Mary Alexander and James Webster, of Onomea. The young ladies arrived from Scotland in company with Mr. and Mrs. Chalmers on the bark Annie Johnson about ten days ago. Rev. Mr. Hill, of the First Foreign Church, officiated. After the ceremony, all were invited to partake of the wedding feast, which was followed by a merry dance.

On account of the death of Mrs. D. H. Hitchcock on last Tuesday, the church social was postponed for one week, and will be held in the parlors of the church Tuesday evening, November 5th.

The U. S. S. Bennington came into port Friday afternoon about 3 o'clock. She reports having encountered rough weather on her passage up, and in consequence her guests, U. S. Minister Willis, wife and son, and Dr. Cooper suffered the indisposition of seasickness. Minister Willis and family have not yet been ashore owing to unpleasant weather. Dr. Cooper is the guest of Dr. Williams. A number of the officers and Dr. Cooper were entertained at dinner Friday evening at a down-town restaurant by some of the Hilo young men.

It is interesting to note the flourishing condition of Hilo's kindergartens. The public kindergarten, under the able management and instruction of Miss Guild and her assistant, has between thirty and thirty-five children in charge. Miss Guild's private class, which meets at her room in the old Coney House in the afternoons, numbers about a dozen. Mrs. Walsh has charge of the Chinese kindergarten and is doing excellent work. At present she is taking advantage of an opportunity to improve her own well advanced methods by study with Miss Guild who has had charge of kindergarten work in California.

Miss Celia Plunkett, who was reported in the Oakland and San Francisco papers as having "charge of the children of the American colony in Hilo," is engaged as private teacher at the home of C. C. Kennedy at Waiakea.

Fred Smith of Honolulu is a guest of Mr. and Mrs. E. D. Baldwin.

Mr. Low of Kukuihaele came over to attend the double wedding at Waiakea.

Miss Nellie Porter returns to Honolulu on this Kinau to resume her school duties at Punahou.

The last sad rites were paid to the lamented dead, Mrs. D. H. Hitchcock, on Tuesday afternoon. Rev. C. W. Hill, assisted by a choir from his church, conducted the services at the house. The funeral cortege was one of the largest Hilo has known. The concluding services at the grave were very short, thus lessening the terrible pang which the burial of a loved one must give.

Hiloites congratulate the Gazette Company upon the neat appearance of its papers.

The Kona and Kau telephone line will be completed on the Kau side to the volcano by Wednesday next, November 6th, so that connection will be complete from Hilo to Naalehu. The Kona side will not be ready much before Christmas.

In consequence of union meetings in the Haili church last evening there were no services in the Foreign or Portuguese churches. The following interesting program was well carried out:

Gospel Hymn; anthem by the Haili church choir; concert recitation of scripture, anthem by the Foreign church choir; prayer; singing by the Hilo Union School; concert recitation, "Strikes"; singing by Hilo Boarding School; recitation, "What Would You Think?"; solo by Mrs Au-tin; recitation, "How Much Owest Thou?"; anthem by Foreign church choir; remarks by Mr. Baptiste; singing by Haili church choir; recitation by Florence Hill; remarks by Mr. Hill; closing hymn, No. 74 1 stanza; Benediction.

A meeting of the American residents of the Hilo and Olaa districts was held in the Hilo court house Saturday evening, November 2d, to discuss ways and means and arrange for a suitable reception and banquet to be tendered American Minister Willis and the officers of the U. S. gunboat Bennington, now in port. The meeting was called to order by A. B. Lobenstein, who in a few well-chosen remarks complimented the assembly on the unanimity and enthusiasm with which every American had hailed the opportunity to show honor to his country's representative, and that whatever at other times and in other places might be the differences of opinion, political and otherwise, here at least all met on common ground as Americans. Hilo has seen no gathering for many months where the sentiment was so united throughout, and only in the detail whether the banquet should be distinctly American in character or whether so-called "representative citizens" should also be included in the general invitation, was the discussion other than viva voce. It is anticipated that the reception and banquet will be one of the most elaborate and enthusiastic affairs ever held in Hilo.

## BOARD OF FOREIGN MISSIONS.

Meeting of Woman's Branch Yesterday—Interesting Papers.

A meeting of the Woman's Board of Foreign Missions was held in the parlors of Central Union Church Tuesday afternoon. A large number of ladies was present, among whom was Mrs. McCully-Higgins who arrived yesterday on the O. & O. S. S. Coptic.

Mrs. McCully-Higgins spoke of her very pleasant trip to Japan. Two things struck her very forcibly. One was the great beauty of the temples which seemed so full of heathenism; and the second was the love and unity made manifest by the missionaries of the various denominations represented.

Miss Mary Green reported that she had visited Maternity Home and found everything in a very flourishing condition. Miss Green expressed herself as being very much pleased with Mrs. Lemon, the matron, and asked the ladies to visit the home. Miss Green also spoke of the great need of a kindergarten at Palama.

A most interesting paper on "Reminiscens of Early Missionary Ladies" was read by Mrs. Robert Andrews. The same paper will be read before the next meeting of the Mission Children's Society. In the paper were inserted bits of the journals of early lady missionaries on the islands.

A resolution expressing the love and sympathy of the board to the family of the late Mrs. A. V. Soares, was adopted.

At the next meeting of the board Mrs. A. F. Cooke will read a paper in memoriam of Mrs. Soares.

Mrs. A. F. Cooke made a report on the "Lima Kokua" and stated that good work was being done in that branch of the board.

The kindergartens were all reported to be in very good condition.

The afternoon's collection amounted to $42.

### Looking Into Blight.

James Stanes, a coffee planter of Nilgerry Hills, Southern India, is in the city looking into the coffee industry here and investigating the blight and its remedy. Mr. Stanes arrived by the Coptic, and will visit plantations on Hawaii before leaving here.

He states that the crop in India has been very materially reduced through the ravages of the blight, and that, up to the time of his departure from his home, nothing had been introduced that would eradicate it.

The coffee in India, Mr. Stanes states, is picked entirely by coolie labor at an average cost to the planter of $1.75 per man a month.

# A HONOLULU SONG BIRD.

The Life of Annis Montague, the Soprano.

KNOWN THE WORLD OVER.

The Sister of C. M. and A. F. Cooke—To Return to Honolulu—A Pupil of the Great Masters—Her Record in the States—A Favorite in Australia.

[From Sydney Morning Herald.]

Sydney opera-goers bade farewell to a well-known and popular prima donna at the Lyceum on Thursday afternon, for no singer who has visited Australia has essayed a greater number of grand opera roles with the same complete and long continued success. Miss Annis Montague, whose career was broken by the untimely death of her husband, Mr. Charles Turner, sails towards the end of next month for Honolulu, where her mother, Mrs. Cooke, still flourishes at the age of 83, and where so she has other relatives. Miss Montague comes, indeed, of a musical family. Her grandmother Mrs. Montague, who died at Baltimore at the great age of 94, was a fine singer, and Mrs. Cooke, who was known throughout the Hawaiian Islands as "The Singing Missionary," retained her beautiful voice so many years that at the age of 68 she sang a roulade, closing in a trill with so much brilliancy that Mr. Charles Turner mistook her voice for that of his wife. Born in an atmosphere of music, it is not surprising that early in her teens Miss Montague left Honolulu to study singing in Paris. Her first master there was Wartell, the great tenor who taught both Christine Nilsson and Trebelli-Bettini, and her second teacher was Bellari, a famous Spanish tenor from Madrid. Her debut was at a concert given by the latter at the Rossini Theatre, Paris, as the outcome of her success at which Victor Masse—whose opera, "Paul and Virginia," she was destined to introduce in Australia—gave her free admission to all the Sundey concerts at the Conservatoire. This was in 1874, when Miss Montague was awarded the prize at a great public competition for the most perfect execution and trill, the certificate accompanying which was signed by Charles Gounod, Ambroise Thomas, Carvalho, Halanzier, Begier and Vianesi—the last named being the since famous conductor of Covent Garden Opera. After this Miss Montague made her professional debut at Booth's Theatre, New York, appearing in the high soprano role of the Queen in "Les Huguenots," with Marie Roze as Valentine. Miss Montague sang in Italian opera for two years (1875-6), one of her best parts being that of Filina in "Mignon," and she made a great success as Lucia, with Joseph Maas, the young English tenor who would have rivalled Sims Reeves had he lived, as Edgardo. In 1878 Miss Montague entered upon a long engagement with the Hesse-Kellogg American Opera Company, the foremost operatic combination in the States. It was then that the prima donna began to sing dramatic roles as well as the florid light soprano characters in which she had first made her name. In 1880 the soprano returned to her mother's house at Honolulu for her marriage with Mr. Charles Turner, who followed her there from America. The pair then paid their first visit to Australia, and founded the Montague-Turner Opera Company, which afterwards endured so many years. Their debut was at the Sydney Gaiety Theatre, with a cast which included Mr. Edward Farley as baritone, Miss Lambert as contralto, and Mr. Gordon as bass. M. Leon Caron conducted this season, which lasted two months, and during which, to crowded houses, "Maritana" and "Bohemian Girl" each ran three weeks. The tenor and the soprano sang together every night for four years with hardly a break, and early in 1885 they returned to New York and filled important engagements with Madame Thurber's famous opera company. With this company the pair appeared as Elsa and Lohengrin in New York, Boston, and Chicago—characters they never performed in this country. Mr. Charles Turner at this time sang for three months with the Theodore Thomas orchestra, and, after a long residence in America and in England, both artists returned to Australia, arriving in March, 1890. After singing together throughout the Halle-Neruda concerts of that season they resumed their operatic and oratorio engagements, until the regretted death of Mr. Turner at Auckland in July last year. Australians will always retain a feeling of warm friendship for Mrs. Charles Turner; but her retirement from the Australian stage will bring with it the knowledge that she is returning to her Hawaiian home for rest and quiet, after an unusually arduous career.

Yesterday afternoon, about 3 o'clock, E. I. Spaulding and Henry Davis started Ewa way with their guns and dogs in search of plover. Their success was something phenominal. Mr. Spaulding bagged to his own gun 120 birds, and Mr. Davis bagged sixty. About forty more were lost through the coming in of the tide.




NEWSPAPERARCHIVE®

# THE BOARD OF HEALTH.

## Objections to Opening of a Ditch.

### FATHER CONRADY AT MOLOKAI.

**Objects to Removal From the Settlement—The Ditch Through W. W. Hall's Property—Unhealthy Place. Chinese Doctor Refused License.**

At a meeting of the Board of Health, held Wednesday afternoon, there were present President Waterhouse, members Lansing, Keliipio, Reynolds, Drs. Emerson, Wood, Day and Minister Cooper.

Superintendent Brown of the water works requested an appropriation of $2500 for expenses of running the pumping plant. The last appropriation was exhausted. The Board decided to take $2500 from the cholera expenses to be used for the pumping plant.

A letter was read from E. H. Wodehouse asking that fishing at Kukuluaeo be permitted. Dr. Emerson moved that restrictions upon waters east of the new retaining wall be removed. Carried.

Dr. Wood moved to remove restrictions on fishing on the west side of the entrance to Kalihi. Carried.

Superintendent Brown of the water works stated that fresh water was used by shipping ostensibly for washing decks, and the Government was receiving no pay for the supply. Dr. Day moved that the water of the harbor be used for washing the decks of vessels in port. Carried.

The claim of Wong Chow for damages at being turned out from the flats at Leleo or Kaliu was referred to Health Agent Reynolds. Damages claimed, $54 60.

The resignation of Dr. Russell from Waianae was read and accepted. Dr. Day moved that in the acceptance of the resignation be included a vote of thanks of the Board. Carried.

The application of Mrs. H. L. Jenkins for permission to reside on Molokai was referred to the president.

Father Conrardy's letter was read. In it he asked the reasons for the Board of Health, in the action of ordering him off the leper settlement at Molokai. He asked the Board to consider deeply the responsibility of removing from the settlement a contaminated person such as himself.

Dr. Wood reported that the committee had examined the Chinese doctor, and found him totally incompetent. Dr. Wood recommended that no license be granted him. The recommendation of the committee on examination was accepted.

On the subject of opening a ditch through the grounds of W. W. Hall, the following communications were received—the first from W. W. Hall, the second from P. C. Jones:

In reply to your note of the 26th instant addressed to me, announcing that the irrigating ditch which runs through my grounds, which was closed by your order during the cholera epidemic, may be reopened under certain conditions, I beg leave to lay before the Board of Health a few facts

At any time during the last fifteen years or more this ditch might justly have been closed by order of the Board on the ground of its being a menace to the public health.

In support of this statement, I would say that the stream was not perpetual; much of the time, especially at night, there was scarcely enough water to carry a straw along, and at such times a very unpleasant odor arose from its bed, conducive to malaria.

I think Dr Day will remember that Mr. Wm. Foster while occupying one of my cottages a year or two ago, suffered an attack of malarial fever, and it is certain that when Dr. Nichols was considering whether or no he would take this cottage, Mrs Foster told him that she thought the stream an unhealthy one. When Mr. E R. Newman's family occupied another cottage in my grounds, on the edge of this ditch, they suffered frequently from head aches, which they felt were caused by the stream, and, once at least, had serious sore throats, which were almost diphtheretic in their nature. Certainly, diphtheria is almost as much dreaded as is cholera.

For years Dr. Stangenwald has held that this stream was dangerous to the health of the neighborhood, and that it was the source of all the malaria which has appeared in this locality.

The late J. T. Waterhouse, Esq, took great pains to make the stream safe by cementing its bed and sides through his grounds, but, in spite of his efforts, it never could be made tight enough to prevent seepage which kept the ground under and back of his house in a swampy condition, causing a musty and unwhole some odor.

Mr. Waterhouse died of malarial fever, and soon after moving into the same house Mrs. Henry Waterhouse suffered an attack also, and other members of the family have suffered more or less from the same cause.

Sixteen years ago there was an epidemic of typhoid malaria in Honolulu At that time along the course of the stream, from the Mist place to the premises now owned by Mrs T. R. Foster, I can recall at least thirteen cases, five of which proved fatal Even then this irrigating ditch was named as a cause of the trouble

We have the same right held by all other land owners along the course of the ditch for irrigating. I have gone to no little expense and inconvenience to close the stream, but have done it cheerfully, feeling that it was a wise measure. To reopen it, however, would be not only an additional expense but a menace to the public health, and while we might not be in any immediate danger from cholera, we might learn to our sorrow that cholera is not the only epidemic to be dreaded. Furthermore, while the stream has been in a way a convenience to us, it has also been an injury to my property, as more than once it has stood in the way of our finding tenants for our cottages.

I cannot discover that at this time any one depends upon this stream for irrigating, with the exception of Judge Judd and Mrs. T. R. Foster I understand also that Judge Judd is quite willing to make other arrangements.

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I am in receipt of yours of October 26th informing me that the ditch ordered closed by the Board of Health may be reopened, provided I will sever connection between the ditch and cesspools and drains.

In reply, I would beg to say that I was ordered to fill up this ditch, being assured that it would not be reopened, and have done so at a large expense to myself, having filled in part and destroyed a cemented ditch, which was put down only last year at an expense of $150, besides building a new cesspool at a cost of over $200, to take the connections formerly running into the ditch lately closed.

In my opinion it would be dangerous to the health of the people living along the line of the old ditch to have it reopened, for the reason that often there is but little water flowing through it, and at such times mangoes, bananas and leaves from trees along the ditch fall in and remain there to rot, there not being sufficient water to carry them off; then the ditch leaks in many places, and in my own lot I have expended considerable money to stop the leaks, but without avail, and the seepage keeps the land adjoining wet continually, besides forming *pools of stagnant water that must breed disease*, thereby making it very unhealthy, besides being injurious to the land, over which the ditch has no claim whatever.

I most earnestly protest against reopening this ditch, and hope the Board will make a most careful investigation before allowing same to be reopened.



The Daily Advertiser 75 cents a month. Delivered by carrier.

# ARE YOU AN AMERICAN?

## Secretary Olney Says Captain Ross Is Not.

### THIRTY YEARS RESIDENCE A BAR.

**It Is Only a Rumor, but It Comes Straight—Must not Remain Away too Long—Similar Cases in European Capitals—Claims Affected.**

It was rumored on the street yesterday that the State Department at Washington had refused to consider the claim of Captain John Ross against the Hawaiian Government for damages. This is one of the cases growing out of the January revolution.

The grounds for the action of Secretary Olney are stated to be briefly these: That Captain Ross while an American citizen to the extent that he has never renounced his allegiance to the United States Government, the fact that he has remained away from there and has been engaged in business outside the limits of the territory of that government is evidence sufficient that he did not intend to make the United States his place of abode.

A ruling of the same nature was made recently by Ambassador Bayard in the case of certain individuals, Americans, who have been identified with certain business affairs in London for the past twenty-five years. Another instance was the case of a dentist who had been practising his profession in St. Petersburg for twenty-four years but who had been living away from the United States for thirty years. Once in two years it had been his custom to call at the United States Legation and have his passport reissued for two years more. On a recent visit he was notified that his passport could not be renewed because the United States could not consider a man a citizen who kept himself away for so long a period, and that such documents were issued to tourists and persons sojourning for a limited time. Upon appealing to the State Department he was informed that he might receive a new passport by visiting the United States in person and presenting an application. The individual did as requested and when he received his passport he found that it was made out to read that he was not to engage in business. He was informed at the same time that the passport would not be renewed.

If this rumor is correct, and there seems to be no doubt about it, the citizenship of half a hundred prominent people here will be affected. It is impossible that the ruling regarding citizens of the United States residing in Hawaii, is just only from the standpoint of an official in a democratic administration. Inquiry was made at the foreign office yesterday regarding the rumor but nothing had been heard of it officially or otherwise. As the case had never gone into the foreign office here and as Secretary Olney would not consider it the officials here would not be advised of the matter.

# SHIPPING INTELLIGENCE.

VESSELS IN PORT.

MERCHANTMEN

(This list does not include coasters.)

W H Dimond, Nilson, San Francisco.
Bktne S G Wilder, McNeil, San Francisco.
Ship Marie Hackfeld, Walters, Liverpool.
Bk City of Adelaide, Williamson, Newcastle.
Bktne S N Castle, Hubbard, S F
Schr Spokane, Jamieson, Port Gamble.
Bark Don Adolfo, Larsen, Newcastle.

FOREIGN VESSELS EXPECTED

| Vessels. | Where from | Due |
|---|---|---|
| Br bk Alden Grove | Liverpool | Due |
| Ger bk J C Pflueger | Bremen | Due |
| Ger sh H Hackfeld | New York | Due |
| S C Allen | S F | Due |
| O S S Australia | S F | Nov 15 |
| R M S S Mariposa | S F | Nov 21 |
| C A S S Miowera | Vancouver | Nov 24 |
| O & O S S City of Peking | China | Dec 6 |
| Bk Paul Isenberg | Liverpool | Dec 30 |

ARRIVALS.

TUESDAY, Nov 5

O & O S S Coptic, Lindsay, from Yokohama and Hongkong.
Bktne W H Dimond, Nilson, from San Francisco.
Stmr Kinau, Clarke, from Hawaii and Maui.

THURSDAY, Nov 7.

Stmr Waialeale, Gregory, from Kauai.
Stmr James Makee, Peterson, from Kauai.
Stmr Hawaii, Fitzgerald, from Hawaii.
Stmr J A Cummins, Neilson, from Oahu ports.
Stmr Kaala, Thompson, from circuit of Oahu.

DEPARTURES.

TUESDAY, Nov 5.

Bk R P Rithet, Morrison, for San Francisco.
Stmr Claudine, Cameron, for Maui.
Stmr W G Hall, Simerson, for Maui and Hawaii.
Stmr Ke Au Hou, Thompson, for Lahaina, Kailua and Punaluu.
Stmr Waimanalo, Calway, for ports on Oahu.

WEDNESDAY, Nov 6.

O & O S S Coptic, Lindsay, for San Francisco.
Stmr Mikahala, Haglund, for Kauai ports.
Stmr Kauai, Brown, for Makaweli.

THURSDAY, Nov 7.

Am ship S P Hitchcock, Gates, for New York.
Bk Amy Turner, Warland, for Hongkong.
Stmr James Makee, Peterson, for Kapaa, Kilauea, Kalihiwai and Hanalei.

VESSELS LEAVING TODAY.

Stmr Kinau, Clarke, for Maui and Hawaii at 10 a.m.
Stmr Waialeale, Gregory, for Lahaina, Kukuihaele and Honokaa at 12 m.

IMPORTS.

Per bktne W H Dimond, from San Francisco, Nov 4—660 tons general merchandise.

Per O & O S S Coptic, from China, Nov 5—200 tons general merchandise.

EXPORTS.

Per bk R P Rithet, for San Francisco, Nov 5—1484 bags sugar for Schaefer & Co, 2224 bags sugar for Brewer & Co, 1205 bags sugar for Castle & Cooke, 2270 bags sugar T H Davies & Co. Total, 7183 bags sugar, 890,280 pounds; value $24,854.

For New York, per ship S P Hitchcock, Nov 7—57,843 sks sugar valued at $202,000. consigned to American Sugar Refining Company.

For Hongkong, per bk Amy Turner, Nov 7—9976 cases kerosne oil in transit.

PASSENGERS.

ARRIVALS.

From Hongkong and Yokohama, per O & O S S Coptic, Nov 5—G E Boardman, Mrs R P Myers, Mrs McCully-Higgins, Miss McCully, Dr Igo Mori Mr K Nimasu, Mr Shinnamura, Mrs Shinnamura, infant and 2 servants, James Stanes, and 119 Chinese and 18 Japanese in steerage.

From Hawaii and Maui, per stmr Kinau, Nov 5—M Grossman, J Wellason, P Peck, A Lindsay, Mrs J Gibb, M Chimura, M Hino, J Maguire, A Tibbs, H Mostonsoy J S Garnett, F Chin Dock, S Nowlein and wife, J Shaw, wife and son, 42 deck.

DEPARTURES.

For Maui and Hawaii, per stmr W G Hall, Nov 5—J Dow, M Wills, J Jorgensen, T Elliot, Mrs Johnson, T Ayres and wife, Richard Lane, H Schultze, O P Emerson, E G Hitchcock, Miss Minnie Bolster, and 52 on deck.

For Maui, per stmr Claudine, Nov 5—Mrs Dickey, Jos Gilman, Judge Kaleo and wife, C Tuck, J W Davidson, Mrs Nahakaauole A Young.

For San Francisco per O & O S S Coptic, Nov 6—Francis M Hatch, Prof Krosnov, Mr Nishimura, T Tawado sen and S Iwato.

For Kauai, per stmr Mikahala Nov 6—Mrs H Isenberg H S Pratt and wife, I Van Camp, C H Bishop, K J Imanishi, Ah Lau, Lon Wing Mrs S K Kaeo, Miss Titcomb, Mrs Bertlemann and servant, C Johnson, Chow Kong, Ah Hon, Masters Weir (2), A Lindsay, and 80 on deck.

BORN.

TOSH—At Laupahoehoe, Hawaii, October 29, 1895, to the wife of John Tosh, a son.

The British bark Velocity arrived at Hongkong on October 13th from this port.

The Bennington and Annie Johnson are at Hilo. The Bennington's officers are enjoying the beauties of the surrounding country.

From the beginning of this year up to the end of Sept. last, fifteen foreign steamers were purchased by Japanese in Yokohama, the aggregate tonnage of which amounted to 22,985 tons, and the prices to 2,082,752.50 yen.

The S. P. Hitchcock, Gates master, sailed for New York city yesterday morning with 57,843 bags of sugar, valued at $202,000, for the American Sugar Refinery Company. The Hitchcock went out drawing twenty-six feet of water, the greatest draught that ever left this port. The ship Kenilworth left this port with 4000 tons of sugar and had a draught of twenty-two feet, while the Hitchcock, with only 3600 tons, had a draught of four feet more.

# LOCAL BREVITIES.

C. S. Bradford is still at the Volcano House.

H. Izawa, a professional landscape gardener from Japan, arrived yesterday.

Minister and Mrs. Willis expect to visit the Volcano before returning to Honolulu.

The Kona-Kau telephone line will reach the Volcano House sometime this week.

The Y. M. C. A. orchestra met for practice last night. Musician Keough of the Hawaiian Band acted as leader.

M. D. Monsarrat, the surveyor, left for Kauai on the James Makee yesterday for the purpose of doing some work there.

In these days of coughs and colds a bottle of Putnam's Cherry Cough Comfort is a good thing. Hobron Drug Company, agents.

Last Sunday sixteen persons were received into Central Union Church—three by profession of faith and the remainder by letter.

Dr. Day, Judge Frear and Professor Richards of Kamehameha went for a three days' cruise to Pearl Harbor on the yacht Edith L. yesterday.

Dr. Iga Mori, who left here for Japan about a year ago, returned on the Coptic and has been appointed physician in the Board of Immigration.

Edward Dowsett, who has been confined to his house for the last week on account of illness, is able to be around again, and will leave on the Kinau for Ulupalakua today.

A meeting of the P. T. C. was held in the office of the Hawaiian Safe Deposit and Investment Company yesterday. George R. Carter was unanimously elected to active membership in the club.

Much of Minister Cooper's time for the past two days has been taken up with receiving friends in the Foreign Office. Between whiles he is busy getting the lay of the land of his new position.

Minister Hatch's letter to Consul-General Hawes in answer to the British Government's request for indemnity for the British subjects arrested during the revolution was on legal cap paper and when the sheets were laid on top of each other the height of all was four inches.

## POLICE COURT ITEMS.

### Famous Japanese Rioting Case Comes Up For Trial.

Most of the time in the police court yesterday was taken up by the Japanese rioting case. The charge of rioting was changed to that of disorderly conduct. The cases of two of the Japanese were postponed until Saturday on account of the non-attendance of the attorney, Paul Neumann. Judgment was reserved until Friday in the case of two other Japanese against whom a prima facie case was made out by the prosecution. They were ordered to file bonds of $250 to keep the peace for the space of one year. All the other cases were discharged.

The case of C. H. White, arrested for striking Lieut. Needham, was postponed until Saturday.

The seven footbinding cases were postponed until November 8th.

Joe Dias was fined $10 for assault and battery on Manuel Monig.



## Y. H. I. FORGING AHEAD.

### Committees Appointed and Plans for Benefit Concert.

At the regular weekly meeting of the Y. H. I., held in Foster Hall last night, President Wilcox presided for the first time. Ex-President Henry Smith and a goodly number of members were present.

After finishing the regular routine business, the following committees were appointed:

Literary committee: President Wilcox, S. M. Kanakanui, J. N. K. Keola, Moses Nakuina and J. H. Bolster. It will be the duty of this committee to provide for reading matter, debates and lectures.

Committee on socials and entertainments: Vice-president Coelho, Dr. George H. Huddy, Isaac Sherwood, S. W. Spencer and one member of the society yet to be appointed.

Visiting committee: James K. Kaulia, J. K. Humphrey, J. K Prendegast, James W. L. McGuire, Jas. L. Kaweweke, John McKeague and S. Meheula. Members of this committee will visit sick members of the institute.

Employment committee: Henry Smith, Jas. H. Boyd, C. L. Crabbe and John A. Baker. The duties of these men will be to search out employment for needy members of the Y. H. I.

Messrs. Henry Smith, W. Coelho and J. L. McGuire were appointed a committee to make arrangements for a concert to be given during the latter part of the month for the benefit of the Y. H. I.

At the next meeting to be held November 21st, the president will read a paper on the "History of Hawaii." W. C. Weedon will deliver a lecture. Musical selections will be added to the interest in the program of the evening. Friends wishing to attend will apply to the members of the Y. H. I.



IN THE CIRCUIT COURT, First Circuit of the Hawaiian Islands—At Chambers. In the matter of the Bankruptcy of PATRICK McINERNY.

ORDER OF PETITION ON BANKRUPT FOR DISCHARGE

Upon filing and reading the petition of Patrick McInerny of Honolulu, alleging that more than six months have elapsed since he was adjudicated a bankrupt, and praying for a discharge from all his debts.

It is ordered, that MONDAY, the 18th day of November, A. D. 1895, in Aliiolani Hale, Honolulu, at 10 A. M. of that day, at Chambers, be and the same is hereby appointed for the hearing of said petition, at which time and place all creditors who have proved their claims against said bankrupt may appear and show cause, if any they have, why the prayer of said bankrupt should not be granted.

Witness my hand this 29th day of October, A. D. 1895.

By the Court:
1703 3t alt J. A. THOMPSON, Clerk.

IN THE CIRCUIT COURT OF the First Circuit of the Hawaiian Islands. In Probate. In the matter of the Estate of MANUEL DA SILVA of Waianae, Oahu, deceased, intestate.

On reading and filing the Petition of Carrie da Silva of Honolulu, alleging that Manuel da Silva of Waianae, Oahu, died intestate at Waianae, Oahu, on the 10th day of December, A. D. 1894, and praying that letters of administration issue to F. W. McChesney.

It is ordered that MONDAY, the 2nd day of DECEMBER, A. D. 1895, at 10 o'clock A. M., be and hereby is appointed for hearing said petition, in the Court Room of this Court, at Honolulu, at which time and place all persons concerned may appear and show cause, if any they have, why said petition should not be granted.

Dated Honolulu, H. I., November 1st, A. D. 1895.

By the Court.
1703 3t alt GEORGE LUCAS, Clerk.

IN THE CIRCUIT COURT OF the First Circuit of the Hawaiian Islands—In Probate. In the matter of the Estate of SAMUEL LOUISSON, late of Honolulu, deceased, intestate.

On reading and filing the petition of M. Louisson, of Honolulu, alleging that Samuel Louisson of Honolulu, died intestate at said Honolulu, on the 16th day of October, A. D. 1895, and praying that Letters of Administration issue to C. Bolte.

It is ordered that FRIDAY, the 22nd day of November, A. D. 1895, at 10 o'clock A. M., be and hereby is appointed for hearing said petition, in the Court Room of this Court, at Honolulu, at which time and place all persons concerned may appear and show cause, if any they have, why said petition should not be granted.

Dated Honolulu, October 23rd, A. D. 1895.

By the Court:
1701-3t alt GEORGE LUCAS, Clerk.

IN THE CIRCUIT COURT OF the First Circuit, Hawaiian Islands. In the matter of the Guardianship of FREDERICK, AUGUST and WALDEMAR PODEYN, Minors.

On reading and filing the petition of K. Podeyn the guardian of Frederick, Augustand Waldemar Podeyn minors praying for an order of sale of certain real estate belonging to his said ward being a certain piece or parcel of land situate in Honolulu, being a part of lot numbered 362 on Pilkoi street, and recorded in the Register Office of Oahu, in liber 99, page 191, and setting forth certain legal reasons why such real estate should be sold, to-wit: That the proceeds be applied for the support and education of said minors.

It is hereby ordered, that the next of kin of the said ward and all persons interested in the said estate, appear before this Court on MONDAY, the 18th day of NOVEMBER A. D. 1895, at 10 o'clock A. M., at the Court Room of this Court, in Honolulu, Oahu, then and there to show cause why an order should not be granted for the sale of such estate.

Dated Honolulu, H. I., October 18th, 1895.

By the Court.
J. A. THOMPSON,
Clerk Circuit Court of the First Circuit.
1700 3t alt

## NOTICE.

NOTICE IS HEREBY GIVEN that at a meeting of the KIPAHULU SUGAR CO held in Honolulu on the 30th October, 1895, the following officers have been elected for the ensuing year:

| | |
|---|---|
| President | J. F. Hackfeld. |
| Vice-President | J. C. Pflueger. |
| Treasurer | E. Suhr. |
| Secretary | C. Bosse. |
| Auditor | W. Pfotenhauer. |

C. BOSSE, Secretary.
1703- 3t alt

## Notice to Creditors.

THE UNDERSIGNED HEREby gives notice that she has been duly appointed by the Circuit Court, First Circuit of the Hawaiian Islands, Administratrix of the Estate of WALTER HILL, late of Honolulu, deceased, and all debts due by said deceased, whether secured by mortgage or otherwise, must be presented to the undersigned duly authenticated within six months from date hereof or they will be forever barred; and all persons indebted to the said estate are hereby notified to pay the same immediately.

Dated at Honolulu, November 1st, 1895.

MARY ANN HILL,
Administratrix of the Estate of Walter Hill, deceased. 1704 4t

## Administrator's Notice.

THE UNDERSIGNED HAVing been appointed Administrator of the Estate of CLARISSA E. CUMMINGS, deceased, by the Hon. W. A. Whiting, First Judge of the First Circuit,

Notice is hereby given to all creditors of the deceased, to present their claims, whether secured by mortgage or otherwise duly authenticated and with the proper vouchers if any exist, to the undersigned, within six months from the date hereof, or they shall be forever barred; and all persons indebted to said deceased are requested to make immediate payment to the undersigned at his office at Kapualwa Hale, in Honolulu.

Dated Honolulu, July 29th, 1895.

W. H. CUMMINGS,
Administrator of the Estate of Clarissa E. Cummings. 1680-2-13-95.

## Notice to Creditors.

THE UNDERSIGNED HAVing been duly appointed Executors of the Estate of THOMAS SORENSON, late of Honolulu, deceased, notice is hereby given to all persons to present their claims against the estate of said Thomas Sorenson duly authenticated whether secured by mortgage or otherwise to Olaf Sorenson at Sorenson and Lyle's office, on Queen Street, Honolulu, Oahu, within six months from the date hereof, or they will be forever barred. And all persons indebted to said estate are hereby requested to make immediate payment thereof to the undersigned.

Dated Honolulu, November 1st, 1895.

KAREN SOPHIA SORENSON,
OLAF L SORENSON,
Executors of the Estate of Thomas Sorenson, deceased. 1703 5w alt



IN THE CIRCUIT COURT OF the First Circuit of the Hawaiian Islands—In Probate. In the matter of the Estate of MANUEL DA SILVA of Waianae, Oahu, deceased, intestate.

On reading and filing the Petition of Carrie da Silva of Honolulu, alleging that Manuel da Silva of Waianae, Oahu, died intestate at Waianae, Oahu, on the 10th day of December, A. D. 1894, and praying that letters of administration issue to F. W. McChesney.

It is ordered that MONDAY, the 2nd day of DECEMBER, A. D. 1895, at 10 o'clock A. M., be and hereby is appointed for hearing said petition, in the Court Room of this Court, at Honolulu, at which time and place all persons concerned may appear and show cause, if any they have, why said petition should not be granted.

Dated Honolulu, H. I., November 1st, A. D. 1895.

By the Court.
1703 3t alt GEORGE LUCAS, Clerk.



## Mortgagee's Notice of Intention to Foreclose.

NOTICE IS HEREBY GIVEN that pursuant to a power contained in a certain mortgage deed dated the 8th day of February, 1892 made by WILLIAM H. CUMMINGS of Honolulu, Island of Oahu, to Alexander J Cartwright, Esq., Trustee of the Estate of R. W. Holt, deceased, of the same place of record in the office of the Registrar of Conveyances in Liber 151, on pages 382 and 383, that the undersigned intends to foreclose said mortgage for condition broken, to-wit: the non-payment of principal and interest.

Notice is also hereby given that after the expiration of three weeks from the date of this notice, the property in said mortgage deed described will be sold at public auction in the City of Honolulu, Island of Oahu, on SATURDAY, the 30th day of November, 1895, at 12 M. of that day at the auction room of Jas. F. Morgan.

Dated Honolulu, Nov. 2, 1895.

For further particulars apply to

BRUCE CARTWRIGHT,
Trustee of the last will and testament of R. W. Holt, deceased.
Or, CECIL BROWN, Attorney at Law.

The property in said mortgage deed described, are all of those certain premises in Wailuku, Island of Maui, Hawaiian Islands more particularly described as follows:

All of those premises described in Royal Patent No. 6496 to Kikane containing 1 8-100 acres, and all of those premises described in L. C. A. No 3231 to Opu Nui, containing 2 35-100 acres being the same conveyed to W. H. Cummings by deed of J Kunoi of record in Liber 74 folio 43, and also that other certain piece of land situate in Wailuku aforesaid, by L. C. A. 3231, award to Opu Nui, known as Mokuhau and Keahupio, and being the same premises conveyed to W H. Cummings by deed of G N. Wilfong of record in Liber 100 on pages 120 and 121

1703-4t alt

## Mortgagee's Notice of Fore closure and Sale.

NOTICE IS HEREBY GIVEN that by virtue of a power of sale contained in a certain mortgage dated the 3rd day of April, A. D. 1891, made by GEORGE TROUSSEAU of Honolulu, Island of Oahu, to Alexander J. Cartwright, Trustee for Adelia Cornwell, of said Honolulu, recorded in the office of the Registrar of Conveyances in Liber 129, on pages 245-247, the undersigned, successor in trust to the said Alexander J. Cartwright intends to foreclose said mortgage for condition broken, to-wit: the non payment of the principal and interest when due.

Notice is also given that all the property covered by said mortgage with all the rights thereto belonging will be sold at public auction at the auction room of James F. Morgan, on Queen Street, in said Honolulu, on SATURDAY, the 23rd day of November, A. D. 1895, at 12 o'clock noon of said day.

The property covered by this mortgage is described as follows:

All those three certain lots or parcels of land situate at Kapahulu in the district of Kona, in said Island of Oahu containing in all an area of 11 2-100 acres and being portion of Apana 22 of the land described in Land Commission Award 8559B and Lots numbered 21, 22 and 23 of Kapahuiu, Lots adjacent to Kapiolani Park and the same premises that were conveyed to the said mortgagor, George Trousseau by Charles M. Cooke, Trustee for Anna H Bailey by deed of even date with said mortgage.

Also the irrigating plant, pumps, piping, etc., upon said premises.

Terms cash. Deed at expense of purchaser.

F. W. MACFARLANE,
Successor in Trust to Alexander J Cartwright, Trustee for Adelia Cornwell.
1701-4w alt

## NOTICE.

ALL PERSONS NOT HAVING business to transact with the Humuula Sheep Station Company are forbidden to travel over the roads or trails on the lands controlled by said company without previously obtaining permits.

Dogs found on the land will be destroyed, and no bands of animals be allowed to pass over the roads.

HUMUULA SHEEP STATION COMPANY
Kalaieha April 20, 1895 1065-1



NOTICE.

All advertisements intended to be published in the Semi-weekly GAZETTE must be at the office of the Company not later than 5 o'clock P. M. on MONDAYS and THURSDAYS, and for the KUOKOA, THURSDAYS; otherwise no assurance can be given that same will be published in the first issue following.

HAWAIIAN GAZETTE CO.,
GEO. H. PARIS,
Manager.




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